



GUIDE TO PROFESSIONAL CONDUCT AND ETHICS FOR REGISTERED MEDICAL PRACTITIONERS

professional conduct

responsibilities to patients

medical records and confidentiality

consent to medical treatment

professional practice

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Introduction

The patient-doctor relationship is a privileged one that depends on the patient's trust in the doctor's 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 this 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. They should act independently in the service of their patients and have a responsibility to advocate with the relevant authorities for appropriate healthcare resources and facilities.

In this edition of the Guide, the Medical Council has sought to clarify a number of specific areas, including consent, confidentiality, end of life care, provision of information to the public, prescribing practices and referral of patients. Increased emphasis in recent years on patient safety has also influenced the expansion of guidance on adverse events and open communication with patients.

The Medical Council also intends to develop, in consultation with relevant stakeholders, further comprehensive guidelines relating to assisted human reproduction and the relationship between doctors and commercial enterprises. Doctors are advised to consult the Medical Council's website www.medicalcouncil.ie for updates on these and other issues as they become available.

In addition to offering guidance to doctors, members of the public are also encouraged to read the Guide to allow them to understand the standards expected of doctors. This will then enable them to participate more equally in the relationship between doctors and patients, a relationship based on partnership and underpinned by shared responsibilities.

I would particularly like to thank Dr Deirdre Madden, who chaired the Ethics Working Group, members of the Ethics Working Group and members of Council staff for their energy, dedication and enthusiasm in assisting the Medical Council with the development of this edition of the Guide. In addition, the Medical Council is grateful for the numerous submissions received which proved an invaluable resource in revising the Guide and securing its position at the centre of the patient-doctor relationship.

Professor Kieran C Murphy

President

Section **A**

Professional Conduct

1 General principles

1.1 Medical professionalism is a core element of being a good doctor. Good medical practice is based on a relationship of trust between the profession and society, in which doctors are expected to meet the highest standards of professional practice and behaviour. It involves a partnership between patient and doctor that is based on mutual respect, confidentiality, honesty, responsibility and accountability.

1.2 In addition to maintaining your clinical competence as a doctor you should also:

- show integrity, compassion and concern for others in your day-to-day practice,
- develop and maintain a sensitive and understanding attitude with patients,
- exercise good judgement and communicate sound clinical advice to patients,
- search for the best evidence to guide your professional practice, and
- be committed to continuous improvement and excellence in the provision of health care, whether you work alone or as part of a team.

2 Professional misconduct and poor professional performance

2.1 Professional misconduct is:

- (a)** Conduct which doctors of experience, competence and good repute consider disgraceful or dishonourable; and / or
- (b)** Conduct connected with his or her profession in which the doctor concerned has seriously fallen short by omission or commission of the standards of conduct expected among doctors.

2.2 Poor professional performance, in relation to a medical practitioner, means a failure by the practitioner to meet the standards of competence (whether in knowledge and skill or the application of knowledge and skill or both) that can reasonably be expected of medical practitioners practising medicine of the kind practised by the practitioner.

2.3 As a doctor, you should be aware that complaints may be made against you to the Medical Council on grounds of professional misconduct or other grounds, including poor professional performance, under the Medical Practitioners Act 2007.¹ This would include complaints based on unacceptable behaviour or poor communication.

¹ Medical Practitioners Act, 2007
www.irishstatutebook.ie/2007/en/act/pub/0025/index.html

3 Court convictions

- 3.1** If a doctor is convicted of a criminal offence, this will be notified to the Medical Council, which will investigate the circumstances involved. You may not be able to avoid an inquiry by claiming that you were not on duty at the time of the offence.

Section **B**

Responsibilities to Patients

4 Paramount responsibility to patients

- 4.1** Your paramount professional responsibility is to act in the best interests of your patients. This takes priority over responsibilities to your colleagues and employers.

5 Dignity of the patient

- 5.1** All patients must always be treated with respect for their dignity.
- 5.2** Patients with disabilities are entitled to the same treatment options and respect for their autonomy as any other patient. Disability does not necessarily mean lack of capacity. Any decision you make on intervention or non-intervention in the case of a person with a disability requires their consent. If a person with a disability lacks the capacity to give consent, you should consult their parents, guardians or carers. Where necessary you should consider getting a second opinion before making decisions on complex issues. Further guidance is provided at paragraph 34.

6 Protection and welfare of children

- 6.1** As a doctor, you should be aware of the national guidelines for the protection of children, which state that the welfare of the child is of paramount importance.²
- 6.2** If you have any concerns regarding alleged or suspected sexual, physical, emotional abuse or neglect of children, you must report this to the appropriate authorities and/or the relevant statutory agency without delay. You should inform the child's parents or guardians of your intention to report your concerns unless

² Children First: National Guidelines for the Protection and Welfare of Children
www.dohc.ie/publications/pdf/children_first.pdf?direct=1

informing the parents or guardians might endanger the child. Giving information to others for the protection of a child may be a justifiable breach of confidentiality.

7 Reporting of alleged abuse

7.1 Where adult patients disclose abuse that took place during their childhood, you must assess the current risk to your patient or any other person (child or adult) who may be in contact with the alleged abuser. If you consider that anyone is at risk, you should report this to the appropriate authorities, preferably with your patient's consent.

7.2 You have a duty to be alert to the possibility of abuse of vulnerable adults or elderly patients and to notify the appropriate authorities if you have concerns. Giving information to others for the protection of the vulnerable may be a justifiable breach of confidentiality.

8 Continuity of care

8.1 Once you undertake the care of patients you should usually provide continuity of care for the duration of the illness. If you decide to withdraw your services, either as an individual practitioner or as part of a team or group that has decided to withdraw care, it does not release you from your ethical responsibilities to patients. This means that you must provide emergency services and any care that may be required by those for whom you hold clinical responsibility. When alternative medical care is in place, you should transfer the patient's medical records without delay.

8.2 You should provide medical information, normally with the patient's knowledge and agreement, to another member of the profession when requested.

9 Refusal to treat

9.1 In exceptional circumstances you may need to consider refusing specific treatments to individual patients. This must never be done on the basis of personal discrimination. You might consider refusing specific treatments because, for example, you consider that the treatment would not work or that it might cause more harm than good. You might also consider refusing treatment where you believe that your patient is unlikely to co-operate or make the lifestyle changes required to make the treatment effective. If you decide to refuse treatment, you must explain your reasons to the patient and offer them an opportunity to review the decision and/or seek another opinion.

10 Conscientious objection

10.1 As a doctor, you must not allow your personal moral standards to influence your treatment of patients.

10.2 If you have a conscientious objection to a course of action, you should explain this to the patient and make the names of other doctors available to them.

10.3 Conscientious objection does not absolve you from responsibility to a patient in emergency circumstances.

11 Emergencies

11.1 You should provide care in emergencies unless you are satisfied that alternative arrangements have been made. You should also consider what assistance you can safely give in the event of a major incident, a road traffic accident, fire, drowning or other similar occurrences.

12 Appropriate skills and facilities

12.1 If you do not have the professional or language skills, or the necessary facilities to provide appropriate medical care to a patient, you must refer the patient to a colleague who can meet those requirements.

13 Treatment of prisoners

13.1 You must treat prisoners with the normal courtesy and respect extended to all patients. You must respect the confidentiality of their information but with due regard for safety and security. You have a right to take appropriate precautions if you think there is a risk to your personal safety.

13.2 You must not participate in torture or other forms of cruel, inhuman or degrading procedures.³ You must not assist with executions.

14 Patients who present a risk of violence

14.1 If you are asked to examine or treat a patient who presents a risk of violence, you should make reasonable efforts to assess any possible underlying clinical causes of the violent behaviour. However, you are not obliged to put yourself or other healthcare staff at risk of undue harm in the course of such assessment or treatment.

³ World Medical Association, Declaration of Tokyo, revised 2006.
www.wma.net/e/policy/c18.htm

15 Physical and intimate examinations

15.1 Clinical assessment of a patient often involves a physical examination as well as relevant history-taking. You should explain what this examination will entail and seek permission from the patient before making a physical examination.

15.2 Where an intimate examination is necessary, you should explain to the patient why it is needed and what it will entail. You should also let the patient know that they can have a chaperone present if they wish.

16 Personal relationships with patients

16.1 Your professional position must never be used to form a relationship of an emotional, sexual or exploitative nature with a patient or their spouse or with a close relative of a patient.

17 Medical students' involvement in patient care

17.1 Most patients understand and support the importance of medical education and training. If you intend to involve students in a patient's care, the patient should be informed. If they have objections, you should respect their point of view as far as possible.

17.2 Medical students must be identified by name and must not be represented as doctors. Students must get permission from patients before they interview or examine them. Patients should not be burdened by excessive contact with medical students.

17.3 You should ensure that your students fully understand their role in relation to patient care.

17.4 Medical students should be familiar with and should adhere to the principles of this Guide.

17.5 You should not allow schoolchildren or other inappropriate people to observe or become involved in the clinical care of patients without the explicit consent of the individual patients and subject to the principles of confidentiality set out in paragraph 24.

18 Adverse events

18.1 Providing medical treatment necessarily involves some degree of risk. However, you must ensure as far as possible that the services and treatments you provide are safe and comply with the standards of the profession.

18.2 If an adverse event occurs, you must ensure that the effects of the event on the patient are minimised as far as possible. If the patient needs further care because of the adverse event, you must make sure that they are helped and supported through this process.

18.3 Patients and their families are entitled to honest, open and prompt communication with them about adverse events that may have caused them harm. Therefore you should:

- acknowledge that the event happened,
- explain how it happened,
- apologise, if appropriate, and
- give an assurance as to how lessons have been learned to minimise the chance of this event happening again in the future.

19 Nutrition and hydration

19.1 Nutrition and hydration are basic needs of human beings. All patients are entitled to be provided with nutrition and hydration in a way that meets their needs. If a patient is unable to take sufficient nutrition and hydration orally, you should assess what alternative forms are possible and appropriate in the circumstances. You should bear in mind the burden or risks to the patient, the patient's wishes if known, and the overall benefit to be achieved. Where possible, you should make the patient and/or their primary carer aware of these conclusions.

20 Assisted human reproduction

20.1 Assisted human reproduction treatments, such as In Vitro Fertilisation (IVF), should only be used after thorough investigation has shown that no other treatment is likely to be effective. You should ensure that appropriate counselling has been offered to the patient and that the patient has given informed consent before receiving any treatment.

20.2 Assisted reproduction services should only be provided by suitably qualified professionals, in appropriate facilities, and according to international best practice. Regular clinical audit and follow-up of outcomes should be the norm.

20.3 If you offer donor programmes to patients, you must consider the biological difficulties involved and pay particular attention to the source of the donated material. Such donations should be altruistic and non-commercial. You should keep accurate records for future reference.

20.4 You should not participate in creating new forms of life solely for experimental purposes. You should not engage in human reproductive cloning.

21 Abortion

21.1 Abortion is illegal in Ireland except where there is a real and substantial risk to the life (as distinct from the health) of the mother. Under current legal precedent, this exception includes where there is a clear and substantial risk to the life of the mother arising from a threat of suicide. You should undertake a full assessment of any such risk in light of the clinical research on this issue.

21.2 It is lawful to provide information in Ireland about abortions abroad, subject to strict conditions.⁴ It is not lawful to encourage or advocate an abortion in individual cases.

21.3 You have a duty to provide care, support and follow-up services for women who have an abortion abroad.

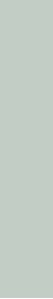
21.4 In current obstetrical practice, rare complications can arise where therapeutic intervention (including termination of a pregnancy) is required at a stage when, due to extreme immaturity of the baby, there may be little or no hope of the baby surviving. In these exceptional circumstances, it may be necessary to intervene to terminate the pregnancy to protect the life of the mother, while making every effort to preserve the life of the baby.

⁴ Regulation of Information (Services Outside the State For Termination of Pregnancies) Act, 1995
www.irishstatutebook.ie/1995/en/act/pub/0005/index.html

22 End of life care

- 22.1** As a doctor, you play an important role in assisting patients, families and the community in dealing with the reality of death. In caring for patients at the end of life, you share with others the responsibility to take care that the patient dies with dignity, in comfort and with as little suffering as possible.
- 22.2** There is no obligation on you to start or continue a treatment, or artificial nutrition and hydration, that is futile or disproportionately burdensome, even if such treatment may prolong life. You should carefully consider when to start and when to stop attempts to prolong life, while ensuring that patients receive appropriate pain management and relief from distress.
- 22.3** You should respect the right of patients to refuse medical treatment or to request the withdrawal of medical treatment. You should also respect a patient's Advance Healthcare Plan (also known as a living will). Further guidance is provided in paragraphs 40 and 41.
- 22.4** You should take care to communicate effectively and sensitively with patients and their families so that they have a clear understanding of what can and cannot be achieved. You should offer advice on other treatment or palliative care options that may be available to them. You should ensure that support is provided to patients and their families, particularly when the outcome is likely to be distressing for them.
- 22.5** After the death of a patient, you should be available to speak with the bereaved family if that is what they wish. You should, as far as possible, explain the circumstances of the patient's death to the family in an open and sensitive manner unless the patient previously recorded an objection to such information being given.

22.6 You must not participate in the deliberate killing of a patient by active means.



Section C

Medical Records and Confidentiality

23 Medical records

23.1 You have a duty to maintain accurate and up-to-date patient records either in manual or electronic form. You are expected to be aware of your obligations under the Data Protection Acts⁵ in relation to secure storage and eventual disposal of such records as well as relevant published Codes of Practice.⁶

23.2 Patients are entitled to receive a copy of their own medical records, provided this does not put their health (or the health, safety or privacy of others) at risk. This right of access is provided for by law.⁷

24 General principles of confidentiality

24.1 Confidentiality is a fundamental principle of medical ethics and is central to the trust between patients and doctors. Patients are entitled to expect that information about them will be held in confidence. You should not disclose confidential patient information to others except in certain limited circumstances outlined in paragraphs 26 to 30.

⁵ Data Protection Acts 1988 and 2003 www.dataprotection.ie

⁶ National Hospitals Office Code of Practice for Healthcare Records Management www.hse.ie/eng/Publications/Hospitals/National_Hospitals_Office_Code_ofPractice_for_Healthcare_Records_Management.html
Guidelines of the Irish College of General Practitioners National General Practice Information Technology Group (www.gpit.ie)

⁷ Data Protection Acts 1988 and 2003 www.dataprotection.ie;
Freedom of Information Act 1997, section 6.
www.foi.gov.ie/legislation/freedom-of-information-act-1997-2/part-ii-access-to-records

- 24.2** Patient information remains confidential even after death. If it is unclear whether the patient consented to disclosure of information after their death, you should consider how disclosure of the information might benefit or cause distress to the deceased's family or carers. You should also consider the effect of disclosure on the reputation of the deceased and the purpose of the disclosure. Individual discretion in this area might be limited by law.⁸ See also paragraph 18.3 in relation to dealing with adverse events.
- 24.3** You should ensure as far as possible that the patient's privacy is maintained at all times and that accidental disclosure of confidential information does not occur.
- 24.4** You should ensure as far as possible that confidential information in relation to patients is maintained securely and in compliance with data protection legislation.⁹

25 Patient information received from third parties

- 25.1** Sometimes it may be necessary to obtain information about a patient from a third party, such as a relative. This information is governed by the same rules of confidentiality set out in paragraph 24.

⁸ Freedom of Information Act 1997 section 28(6) Regulations 1999 www.foi.gov.ie/regulations/regulation.2006-12-06.4301750217

⁹ Data Protection Acts 1988 and 2003 www.dataprotection.ie

26 Disclosure with patient's consent to relatives and carers

26.1 While the concern of the patient's relatives and close friends is understandable, you must not disclose information to anyone without the patient's consent. If the patient does not consent to disclosure, you should respect this except where failure to disclose would put others at risk of serious harm.

26.2 If the patient is considered to be incapable of giving or withholding consent to disclosure, you should consider whether disclosing the information to family and carers is in the best interests of the patient.

27 Disclosure required by law

27.1 In certain limited circumstances, disclosure of patient information may be required by law. These circumstances are not limited to but may include:

- ▶ when ordered by a judge in a court of law, or by a tribunal or body established by an Act of the Oireachtas, or
- ▶ where mandated by infectious disease regulations.¹⁰
- ▶ In these instances, you should inform patients of the disclosure and the reasons for it.

¹⁰ Health Protection Surveillance Centre
www.ndsc.ie/hpsc/NotifiableDiseases/NotificationLegislationandProcess/

28 Disclosure in the interest of the patient or other people

- 28.1** Disclosure of patient information without their consent may be justifiable in exceptional circumstances when it is necessary to protect the patient or others from serious risk of death or serious harm. You should obtain consent of the patient to the disclosure if possible.
- 28.2** If you consider that disclosing patient information is justifiable, you should carefully consider whether anonymisation of the information (sharing it without revealing the patient's identity) would achieve the same potential benefits. You must also be careful to disclose the information to an appropriate person (or body) who understands that the information must be kept confidential. You should only disclose the minimum information that is necessary in the circumstances.
- 28.3** In the preceding instances, you should inform patients of the disclosure unless this would cause them serious harm.

29 Disclosure in the public interest

- 29.1** Disclosure of patient information without consent may be justifiable in exceptional circumstances where it is necessary in the public interest. If health protection staff request it, you may share relevant patient information where it is necessary to protect the public. Before making such disclosures you should consider the possible harm that may result to the patient, as well as the benefits that are likely to arise. Paragraphs 28.2 and 28.3 are also applicable to such disclosures.

29.2 You must report to the appropriate health authority and/or the relevant statutory agency any serious adverse event that harmed a patient. To improve practices and learn from errors, you should also ensure that less serious adverse events or near misses are investigated and reported. See also paragraph 18.

30 Disclosure to other healthcare professionals

30.1 Most people understand and accept that information must be shared within the healthcare team to provide safe and effective care. If disclosure of a patient's information is necessary as part of their care and treatment, you should take reasonable steps to ensure that you make such a disclosure to an appropriate person who understands that the information must be kept confidential.

30.2 Clinical audit and quality assurance systems are essential to the provision of good care and must be supported by access to high quality reliable data. When patient information is to be used as part of clinical audit and quality assurance systems, you should anonymise the information as far as possible. Where anonymisation is not possible or appropriate, you should make patients aware that their identifiable information may be disclosed for such purposes. They should have the opportunity to object to disclosure of their information and any such objection must be respected.

30.3 Education and training of health professionals is essential to the provision of safe and effective healthcare. When patient information is to be used for education and training purposes, you should anonymise it as far as possible. Where anonymisation is not possible or appropriate, you should make patients aware that

their identifiable information may be disclosed for such purposes. They should have the opportunity to object to disclosure of their information and any such objection must be respected.

31 Registers of illness

31.1 With the increasing importance of audit in medicine and the necessity for evidence-based medicine, you should remember that you must adhere to the principles of confidentiality outlined in paragraph 24 if registers of specific illnesses are being kept. You should also be aware of any special legislative provisions in relation to disease registries.

32 Recording

32.1 Audio, visual or photographic recordings of a patient, or a relative of a patient, in which that person is identifiable should only be undertaken with their express consent. These recordings should be kept confidential as part of the patient's record.



Section **D**

Consent to Medical Treatment

33 General principles

33.1 You should ensure that informed consent has been given by a patient before any medical treatment is carried out. The ethical and legal rationale behind this is to respect the patient's autonomy and their right to control their own life. The basic idea of personal autonomy is that everyone's actions and decisions are their own. Therefore, the patient has the right to decide what happens to their own body.

34 Capacity to consent

34.1 Every adult patient is presumed to have the capacity to make decisions about their own healthcare. As their doctor, you have a duty to help your patients to make decisions for themselves by giving them information in a clear and comprehensible manner and by ensuring that they have appropriate help and support. The patient is also entitled to be accompanied during any such discussion by an advocate of their own choice.

34.2 Sometimes a person's capacity to give consent can be affected by infirmity. People who are considered not to have the capacity to give their consent are still entitled to the same respect for their human dignity and personal integrity as any person with full capacity.

34.3 A functional approach should be taken when assessing an individual's capacity. This approach assesses the individual's ability to make the relevant choice depending on:

- their level of understanding and retention of the information they have been given, and

- their ability to apply the information to their own personal circumstances and come to a decision.

34.4 If a patient is unable to understand, retain, use or weigh up the information they have been given to make the relevant decision, or if they are unable to communicate their decision, they may be regarded as lacking the capacity to give consent to the proposed investigation or treatment. A judgment that a patient lacks the capacity to make a particular decision does not imply that they are unable to make other decisions or will be unable to make this or other decisions in the future.

34.5 Where an adult patient is deemed to lack capacity to make a healthcare decision, you should take reasonable steps to find out whether any other person has legal authority to make decisions on the patient's behalf. If so, you should seek that person's consent to the proposed treatment.

34.6 If no other person has legal authority to make decisions on the patient's behalf, you will have to decide what action to take. In doing so, you should consider:

- which treatment option would provide the best clinical benefit for the patient,
- the patient's past and present wishes if they are known,
- whether the patient's capacity is likely to increase,
- the views of other people close to the patient who may be familiar with the patient's preferences, beliefs and values, and

- the views of other health professionals involved in the patient's care.

35 Informed consent to medical treatment

35.1 Consent given by the patient is the exercise of a voluntary choice; it is the giving of permission for the intervention to be carried out by competent professionals, where possible in an appropriate environment. You should explain the process in such a way as to ensure that patients do not feel that their consent is simply a formality or a signature on a page.

35.2 As part of the informed consent process, patients must receive sufficient information, in a way that they can understand, to enable them to exercise their right to make informed decisions about their care. This refers to the disclosure of all significant risks or substantial risks of grave adverse consequences.

36 Information for patients

36.1 Effective communication is the key to achieving informed consent. You should take appropriate steps to find out what patients want to know about their condition and what they ought to know about their condition, its investigation and treatment.

36.2 The amount of information given to individual patients will vary according to factors such as the nature of the condition, the mode of investigation, the complexity of the treatment, the risks associated with the treatment or procedure and the patient's own wishes. For example, patients may need more information to make an informed decision about a procedure that carries a high risk of failure or adverse side effects or about an investigation for

a condition that, if found to be present, could have serious consequences for the patient's employment, social or personal life. See also Appendix A.

- 36.3** When you are providing information, you should consider patients' individual needs and priorities. For example, patients' beliefs, culture, occupation or other factors may have a bearing on the information they need to reach a decision. You should ask your patient whether they have understood the information they have received and if they would like more information before making a decision.
- 36.4** You must answer any questions the patient raises as fully as the patient wishes. You must not withhold from a patient any information necessary for decision making unless disclosure would cause the patient serious harm. In this context 'serious harm' does not mean the patient would become upset or decide to refuse treatment.

37 Timing of consent process

- 37.1** Obtaining informed consent cannot be an isolated event. It involves a continuing process of keeping patients up to date with any changes in their condition and the treatments or investigation proposed. Whenever possible, you should discuss treatment options at a time when the patient is best able to understand and retain the information.
- 37.2** It is not recommended to seek consent when a patient may be stressed, sedated or in pain and therefore less likely to make a calm and reasoned decision. Where possible, you should explain risks well in advance of an intervention.

38 Responsibility for seeking consent

38.1 If you are the doctor providing treatment or undertaking an investigation, it is your responsibility to discuss it with the patient. As the treating doctor, you will have a full understanding of the procedure or treatment, how it is carried out and the risks attached to it. If it is not possible for you to do this, you may delegate the discussion to another person as long as that person is suitably trained and qualified, has sufficient knowledge of the proposed investigation or treatment and understands the risks involved. The treating doctor remains responsible for ensuring that the patient has been given sufficient time and information to make an informed decision and consented to the procedure or investigation.

38.2 In general, interns are not considered appropriate people to undertake this responsibility unless the procedure is a minor one with which the intern is very familiar and the intern's medical supervisor has clearly explained the relevant information about the procedure to them.

39 Emergency situations

39.1 In an emergency, where consent cannot be obtained, medical treatment may be provided to anyone who needs it, provided the treatment is limited to what is immediately necessary to save life or avoid significant deterioration in the patient's health.

40 Refusal of treatment

40.1 Every adult with capacity is entitled to refuse medical treatment. You must respect a patient's decision to refuse treatment, even if you disagree with that decision. In these circumstances, you

should clearly explain to the patient the possible consequences of refusing treatment and offer the patient the opportunity to receive a second medical opinion if possible.

40.2 The explanation you give the patient and the patient's refusal of treatment should be clearly documented in the patient's medical records.

40.3 If you have doubts or concerns about the patient's capacity to refuse treatment, the provisions set out in paragraph 34 apply.

41 Advance healthcare planning

41.1 Sometimes patients might want to plan for their medical treatment in the event that they become incapacitated in the future. This might include an advance refusal of medical treatment and/or a request for a specific procedure. However, you are not obliged to provide treatment that is not clinically indicated for a particular patient.

41.2 An advance treatment plan has the same ethical status as a decision by a patient at the actual time of an illness and should be respected on condition that:

- the decision was an informed choice, according to the principles of informed consent in paragraph 33,
- the decision covers the situation that has arisen, and
- the patient has not changed their mind.

41.3 If there is doubt about the existence of an advance treatment plan, the patient's capacity at the time of making the treatment plan or whether it still applies in the present circumstances, you should make treatment decisions based on the patient's best interests. In making such a decision, you should consult with any person with legal authority to make decisions on behalf of the patient and the patient's family if possible.

42 Consent to genetic testing

42.1 Genetic testing can help to diagnose an illness or help to predict the development of an illness in the future. An individual who wishes to have such testing carried out must be counselled about the possible consequences of testing.¹¹ Informed consent is a requirement for genetic testing.

43 Children and minors

43.1 Children and young people should be involved as much as possible in discussions about their healthcare. When you are talking to a child or young person, it is important to give them information in an age-appropriate manner, listen to their views and treat them with respect.

¹¹ Disability Act 2005 Part 4
www.oireachtas.ie/documents/bills28/acts/2005/a1405.pdf

- 43.2** Patients aged 16 years and over are entitled by law to give their own consent to surgical, medical or dental treatment.¹² This entitlement does not apply to other areas such as organ or tissue donation or participation in medical research.
- 43.3** A refusal of treatment by a patient between 16 and 18 years, which is against medical advice and parental wishes, is of uncertain legal validity. In this event, you should consider seeking legal advice before acting on such a decision.
- 43.4** Where the patient is under the age of 16 years, it is usual that the parents will be asked to give their consent to medical treatment on the patient's behalf.
- 43.5** In exceptional circumstances, a patient under 16 might seek to make a healthcare decision on their own without the knowledge or consent of their parents. In such cases you should encourage the patient to involve their parents in the decision, bearing in mind your paramount responsibility to act in the patient's best interests.
- 43.6** When treating children and young people, you should remember your duties of confidentiality as provided in paragraph 24, subject to parental rights of access to medical records which may arise by law.¹³ You should tell these young patients that you cannot give an absolute guarantee of confidentiality.

12 "Surgical, medical or dental treatment" includes any procedure undertaken for the purposes of diagnosis, including the administration of an anaesthetic which is ancillary to any treatment.

Non-Fatal Offences against the Person Act 1997, section 23.

www.irishstatutebook.ie/1997/en/act/pub/0026/sec0023.html#zza26y1997s23

13 Freedom of Information Act 1997 section 28(6) Regulations 1999

www.foi.gov.ie/regulations/regulation.2006-12-06.4301750217



Section **E**

Professional Practice

44 Maintaining competence

44.1 You must maintain your competence throughout your professional career by taking part in the professional competence schemes established by the Medical Council.

45 Concerns about colleagues

45.1 If you have concerns about a colleague's conduct or competence, you should talk through your concerns initially with the doctor in question. In such a situation, or where you have a concern in relation to potentially unsafe systems, you must act to prevent any immediate risk to patient safety by taking appropriate steps to notify the relevant authority about your concern as soon as possible. If you are not sure who you should report your concern to, ask a senior colleague for advice.

45.2 If you are concerned about a colleague's health or professional competence due to misuse of alcohol or drugs, a physical or psychological disorder or other factors, you have an overriding duty to make sure that patients are protected. The best way to support a colleague in such circumstances is to advise them to seek expert professional help or to consider referral to the Medical Council's Health Sub-Committee. However, if there is a risk to patient safety, you must inform the Medical Council of your concerns without delay.

46 Relationships between colleagues

46.1 Doctors working in multidisciplinary teams should ensure that there are clear lines of communication and systems of accountability in place among team members to protect patient

46.2 Subject to paragraph 45 of this Guide, you should give professional support to colleagues including medical students, junior colleagues and doctors in training. Junior colleagues should not be asked to perform tasks for which they are not fully competent, except under the direct supervision of senior colleagues. Junior doctors should consult promptly with their senior colleagues where a patient's condition gives cause for concern. Senior doctors should encourage their junior colleagues to do this. If you delegate tasks to doctors in training, you are still responsible for making sure the task is carried out safely and competently.

46.3 You have a duty to treat all healthcare workers, including healthcare students, with dignity and respect.

46.4 When disputes arise between colleagues, they should be settled privately and as quickly as possible. Such disputes should not impact on patient care.

46.5 Denigration of a colleague is not in the interest of patients and should be avoided.

46.6 You must not deliberately damage the practice of colleagues.

47 Providing references

47.1 In keeping with your duty to prioritise patient safety, you have a duty of care in providing references for colleagues. You must make sure that the information and opinions you give are accurate and honest.

48 Accepting posts

48.1 You have a duty to make sure that patient care is not compromised if you decide not to accept a job offer or to leave your employment without giving adequate notice.

49 Healthcare resources

49.1 Subject to your duty to act in the best interests of patients, you have a responsibility to engage and advocate with the relevant authorities to promote the provision of appropriate healthcare resources and facilities.

49.2 You have a duty to assist in the efficient and effective use of healthcare resources and to give advice on their appropriate allocation. While balancing a duty of care to the individual patient, you should be aware of the wider need to use limited healthcare resources efficiently and responsibly. Such awareness should inform decision making in your clinical practice. For example, you are encouraged to prescribe bio-equivalent generic medicines where they are safe and effective and only commission investigations if they are clinically indicated.

50 Professional indemnity

50.1 You must ensure that you have adequate professional indemnity cover for all healthcare services you provide.

51 Health problems

51.1 If you think you might be infected with a serious communicable disease, you must seek appropriate medical advice without delay and ensure that your condition does not pose any risk to patients

or others. The colleague(s) you consult in this regard has a dual role to both help and counsel you and to make sure that you do not pose a risk to patients and others. If such a risk exists, the Medical Council must be informed as soon as possible.

- 51.2** If you become ill, you should seek advice and help from another doctor rather than treat yourself. Even as a doctor, you should have your own general practitioner.

52 Treatment of relatives

- 52.1** Except for minor illnesses and emergencies, it is not advisable for you to treat members of your own family or issue prescriptions, sick certificates or reports for them.

53 Clinical trials and research

- 53.1** If you act as an investigator in a clinical trial or any form of medical research, you must submit and receive approval from the relevant research ethics committee before the research begins. You must ensure that the trial conforms to the Declaration of Helsinki¹⁴ and any relevant national legislation.¹⁵
- 53.2** If you act as an investigator in any form of medical research, you have a duty to ensure that the highest ethical standards are observed in the conduct of the research. In particular, you must ensure that all research participants are fully informed about all

¹⁴ Declaration of Helsinki www.wma.net/e/policy/b3.htm

¹⁵ Clinical Trials on Medicinal Products for Human Use Regulations 2004
www.dohc.ie/legislation/statutory_instruments/pdf/si20040190.pdf

aspects of the study and that they have given their consent voluntarily. You must ensure that the results and authorship of your research are accurately recorded.

- 53.3** If you enrol your patients as participants in research, you should ensure that they understand the nature of the proposed intervention or treatment, particularly where you do not anticipate any therapeutic benefit to them.
- 53.4** A patient's refusal to participate in research must not influence your care of that patient in any way.
- 53.5** You must comply with the Data Protection Acts¹⁶ and you should be aware of the guidelines published by the Office of the Data Protection Commissioner in relation to medical research.¹⁷
- 53.6** If you are paid, directly or indirectly, by pharmaceutical, medical device or other commercial companies or organisations to conduct medical research, you must make sure that such payment does not influence your study design or interpretation of research data.
- 53.7** If you receive payment, directly or indirectly, from pharmaceutical, medical device or other commercial companies or organisations in connection with medical research, you must address any potential conflict of interest arising from such payment and make an appropriate disclosure in any publication of research results.

¹⁶ Data Protection Acts 1988 and 2003 www.dataprotection.ie

¹⁷ Data Protection Guidelines on research in the Health Sector
www.dataprotection.ie/documents/guidance/Health_research.pdf

54 Provision of information to the public and advertising

- 54.1** The provision of information about the availability of medical services through the media, internet or other means is generally in the public interest provided that the information is factually accurate, evidence-based and not misleading.
- 54.2** You may advertise your practice by publicising the name and address of the practice, the practice hours and contact details. You may include your area of speciality if it is one that is recognised by the Medical Council and you are entered for that speciality in the Specialist Division of the Register.
- 54.3** The fees you charge should be appropriate to the service provided. Patients should be informed of the likely costs before the consultation and treatment.
- 54.4** If you consider publicising information further than that specified in paragraph 54.2 in relation to services you provide, either directly or indirectly, you must make sure that the information published in the advertisement is true, verifiable, does not make false claims or have the potential to raise unrealistic expectations. This should include information about any inherent risks associated with the services provided.
- 54.5** You should avoid using photographic or other illustrations of the human body to promote cosmetic or plastic surgery procedures, as they may raise unrealistic expectations amongst potential patients.
- 54.6** To ensure that members of the public can identify doctors registered in Ireland, you must include your Medical Council registration number in any information you publish about your practice.

54.7 If you have a website, you must make it clear on the website that doctors may only practice in countries in which they are registered.

54.8 If you have a website that invites users to enter personal information, a privacy statement and adequate security measures should be in place to safeguard the information's confidentiality.

55 Registered names

55.1 You must practice in the name(s) under which you are registered and always use your registration number when representing yourself as a registered medical practitioner.

55.2 You should always identify yourself to patients before you commence any interview, investigation or treatment.

56 Premises and practice information

56.1 Patients and members of the public are entitled to expect that your premises are clean, accessible and suitable for medical consultations and examinations. The premises should be structured and used in a way that respects the privacy of patients during the consultation.

56.2 You may display a professional plate and sign at your place of practice indicating your registered name, registerable qualifications or international equivalents and registerable specialties. It may also indicate hours of attendance, telephone numbers, services you provide and details of emergency services.

56.3 In addition to the information contained in 56.2, your letter headings must include your Medical Council registration number. They should not include membership of associations or societies other than those recognised or accredited by appropriate training bodies.

57 Medical reports

57.1 If requested, you should provide reports for solicitors or insurance companies in relation to patients you have seen or treated professionally. However, the provision of such reports in the context of potential litigation places additional obligations on you to avoid any actual or perceived conflict of interest.

57.2 If you are asked to conduct examinations where results are to be communicated to third parties such as insurance companies or legal representatives, you should explain to the patient beforehand the nature of the activity and the purpose of the examination. You should conduct these examinations and prepare the reports to the same standard of professionalism as applies to the care and treatment of any other patient.

57.3 Reports should be specific to the episode for which the report has been requested and should not be prepared or delivered without the patient's permission. Where the report relates to the patient's current state of health, you are encouraged to carry out an up-to-date examination where appropriate.

57.5 Reports must be relevant, factual and true. Their content must not be influenced by financial or other inducements or pressures.

57.6 You must provide reports without unreasonable delay to ensure that no disadvantage accrues to patients.

- 57.7** You are entitled to request a professional fee for providing a report. The time and manner of such payments is generally a matter of contract between you and the person or agency who requested the report. However, you must not negotiate your fee based on the outcome of litigation.

58 Certification

- 58.1** In issuing certificates, reports, prescriptions and other formal documents, you must be accurate and make sure the document is legible. You must also include your Medical Council registration number. Normally you should only sign a certificate or other such prescription, report or document for a patient following review of the patient's condition.

59 Prescribing

- 59.1** The prescriptions you issue must be legible, dated and signed and must state your Medical Council registration number.
- 59.2** When prescribing medications, you must comply with the misuse of drugs legislation and other relevant regulations and/or guidelines.
- 59.3** You should ensure you have appropriate training, facilities and support before treating patients with drug dependency or abuse problems. You should refer patients to other services and supports where this is in the patient's best interests.
- 59.4** You must be aware of the dangers of drug dependency when prescribing benzodiazepines, opiates and other drugs with addictive potential.

- 59.5** You should not undertake treatment of opiate dependency unless you have been approved under the Methadone Treatment Protocol. You should make reasonable efforts to ensure that patients with drug dependency are not inappropriately obtaining drugs from multiple sources and you should liaise with drug treatment services, other doctors and pharmacists to safeguard the patient's interest in this regard.
- 59.6** If a telephone prescription is necessary, you should make a note of the call in the patient's notes and records and send a written prescription to the pharmacist without delay. Electronic prescribing must comply with the Data Protection Acts 1988 and 2003 and any other relevant legislation and/or regulations. You must not use electronic prescribing to restrict a patient's choice of pharmacy.
- 59.7** You must ensure as far as possible that any treatment, medication or therapy prescribed for a patient is safe, evidence-based and in the patient's best interests. You should be particularly careful when prescribing multiple medications in case the combination might cause side effects. You should also take particular care when prescribing for patients who may have an impaired ability to metabolise the medication prescribed. You should weigh up the potential benefits with the risks of drug adverse effects and interactions when deciding what to prescribe. This also applies to the exercise of the prescribing of generic drugs. A patient's treatment regime should be reviewed periodically.
- 59.8** You must keep up to date with developments in medication safety. You should not rely solely or excessively on promotional literature distributed by pharmaceutical companies for information about particular drugs. You should seek independent evidence-based sources of information on the benefits and risks associated with medicines before prescribing.

59.9 Your choice of therapy for your patient should always be made in the patient's best interests. You are advised not to accept gifts (including hospitality) from pharmaceutical, medical devices or other commercial enterprises. This does not preclude the payment of reasonable fees if you provide professional services to commercial enterprises. You should be aware that even low-value promotional materials are offered by commercial enterprises with the intention of influencing prescribing and treatment decisions.

59.10 In general, educational funding from commercial enterprises to the healthcare sector should be channelled through unrestricted Education and Development Funds and be managed without influence from the commercial enterprise in question.

59.11 If you receive financial support or other resources from pharmaceutical companies and/or related enterprises in connection with professional activities, including lectures, presentations and publications, development of clinical services or conducting research, you should address any potential conflicts of interest that arise. In these circumstances, your patients and any other relevant party should be informed about any professional relationship you have with these companies.

60 Referral of patients

60.1 It is in the best interests of the patient that a general practitioner supervises and guides the overall management of their health. A patient's request for another opinion should normally be facilitated by making copies of the patient's medical records available to another registered doctor nominated by the patient unless this is deemed not to be in the patient's best interests.

- 60.2** If you consider that it is in the best interests of the patient to be referred for specialist opinion, you should consider relevant professional guidelines and refer your patient to a specialist who is competent and appropriately skilled to deal with the particular patient's condition.
- 60.3** Normally, consultants will see patients following referral from their general practitioner or other treating doctor. In some cases there might be no such referral. In either instance, the patient's general practitioner should be kept informed of the patient's progress, unless the patient specifically objects. See also paragraph 28.1.
- 60.4** It may be in the best interests of patients to be referred by consultants to other doctors as part of their care and management. To ensure continuity of care, the patient's general practitioner should normally be kept informed of any such referral.
- 60.5** Any arrangement whereby a practitioner pays a fee to another practitioner for referrals to them is contrary to the interests of patients and must be avoided.

61 Medical ionising radiation

- 61.1** All doctors performing medical ionising radiation exposures must comply with relevant national regulations and accepted professional standards. The safety of the patient must always be paramount in the performance of radiation procedures. These procedures should be justified and the consent of the patient must be sought according to the principles in paragraphs 33 to 41.
- 61.2** If you are not a radiologist and you undertake radiation procedures for patients, you must complete a course of training in radiation safety and techniques recognised by the Medical Council. The

Medical Council will then issue a certificate permitting you to carry out such procedures on condition that they are undertaken in hospital practice in the presence of a radiologist or a radiographer responsible to a radiologist.

- 61.3** Radiological consultation and investigative procedures should only be performed at the request of a registered medical practitioner or other specialist practitioner and agreed with the practitioner in charge (radiologist), usually the Director of Radiological services. Reports of radiological procedures should be reviewed and verified by the radiologist prior to filing.

62 Telemedicine

- 62.1** The practice of medicine through web-based telemedicine sites or other telecommunication methods requires clear adherence to principles of confidentiality and data protection. If you practise by such means, you must have strong security measures in place to protect the privacy of patient information. Web-based telemedicine sites must make their information policies clear to users. If you provide telemedicine or other telecommunication services to patients within the State, you must be registered with the Medical Council.
- 62.2** You must ensure that the transfer of any personal patient information to other jurisdictions complies with data protection principles.
- 62.3** To help patients to understand telemedicine, you should explain to them that there may be aspects of telemedicine that are different to traditional medical practice, for example a consultation involving physical examination.

62.4 In relation to web-based advertising, paragraphs 54.1 to 54.7 of this Guide apply.

63 Locum and rota arrangements

63.1 You should ensure that the safety and welfare of your patients is protected during your absence. If you arrange replacement cover, you must ensure that the locum doctor is appropriately qualified, registered and in good standing with the Medical Council. As far as possible, patients should be told in advance about the temporary arrangements that will be in place during your absence.

63.2 The locum doctor must ensure that they have appropriate and comprehensive indemnity insurance in place to cover their care of patients.

63.3 To ensure continuity of care for your patients, all details of clinical care provided by the locum must be accurately recorded and dated in the patient's notes and be made available to you without delay.

63.4 If you participate in rota arrangements, you must ensure that there is clear communication among the participants and that each knows who is on duty at any given time.

64 Centres of healthcare and pharmacies

64.1 If you have a financial interest in a private clinic, hospital, pharmacy or other institution to which you refer patients for investigation or therapy, you must inform patients of your association with the institution and make sure that financial considerations do not influence your management of patients.

64.2 If you are associated with private clinics or hospitals, you must ensure that the services offered to patients conform to the clinical and ethical standards of the profession.

65 Retirement and transfer of patient care

65.1 If you are thinking of retiring or reducing your patient list, you should put transfer arrangements in place and let your patients know before these arrangements take effect. With the patient's consent, all relevant medical records should be sent to the doctor taking over the care of the patient.

65.2 You should have a plan in place to ensure continuity of care for your patients if you become unexpectedly ill.

Appendix **A**

Information for patients prior to giving consent

- The information that patients want or should know, before deciding whether to consent to treatment or an investigation, may include:
- details of the diagnosis, and prognosis, and the likely prognosis if the condition is left untreated;
- uncertainties about the diagnosis, including options for further investigation before treatment;
- options for treatment or management of the condition, including the option not to treat;
- the purpose of a proposed investigation or treatment;
- details of the procedures or therapies involved, including methods of pain relief;
- preparation for the procedure and what the patient might experience during or after the procedure, including common and serious side effects;
- for each option, explanations of the likely benefits and the probabilities of success and discussion of any serious or frequently occurring risks and any lifestyle changes which may be caused or required by the treatment;
- advice about whether a proposed treatment is experimental;

- information about how and when the patient's condition and any side effects will be monitored or re-assessed;
- the name of the doctor who will have overall responsibility for the treatment and, where appropriate, names of the senior members of their team;
- whether doctors in training will be involved;
- the extent to which students may be involved in an investigation or treatment;
- a reminder that patients can change their minds about a decision at any time;
- a reminder that patients have a right to seek a second opinion;
- where applicable, details of costs or charges which the patient may have to meet.

Medical Council

Kingram House

Kingram Place

Dublin 2

T. + 353 1 498 3100

W. www.medicalcouncil.ie