

Irish Medical Organisation

Opening Statement to the Joint Oireachtas Committee on Health on the Open Disclosure Provisions to be Contained in the Civil Liability Amendment Bill - 8th December 2016

The IMO would like to thank the Chair and the members of the Joint Oireachtas Committee on Health for the invitation to discuss the Open Disclosure provisions to be contained in the Civil Liability Amendment Bill.

The IMO supports Open Disclosure not only as a measure to prevent litigation but more importantly because patients have the right to an apology and explanation when things go wrong. Doctors and other healthcare professionals have a duty to be open, honest and transparent with patients, to reflect on adverse events and to take steps to ensure that such incidents are not repeated. Open Disclosure is not about apportioning blame but rather about keeping patients informed about investigations and preventing future patient safety incidents. Open Disclosure recognises that healthcare professionals are the second victims of patient safety incidents and successful policies ensure that both patients and healthcare staff alike are supported throughout the disclosure process and the patient safety investigation.

The practice of medicine is increasingly complex and while the majority of healthcare professionals aim to provide the best care for their patients, incidents do occur. Rarely harm is due to wilful misconduct, most often harm is due to systems failure or unintentional human error. Patients are entitled to a full and open disclosure including an apology following an adverse event. Fear of litigation, fitness to practise procedures and damage to reputation have been identified as major barriers to apologising to patients following an adverse event. The IMO has been calling for a number of years for legislation to support Open Disclosure and to protect medical practitioners from admitting liability and from fitness to practise hearings when apologising to patients following an adverse event. Therefore the IMO welcomes the proposed Bill. Doctors as well as patients must have confidence in the Open Disclosure process and it is essential therefore that both the proposed legislation and the standards to be set by HIQA and the Mental Health Commission are concise and unambiguous. The purpose of the legislation is to ensure that Open Disclosure is not an admission of liability and therefore even the fact that an open disclosure is made cannot be construed as an admission of liability. Standards for disclosing patient safety incidents must ensure that disclosure is timely, factual and that principles of patient consent and confidentiality are protected. There must be clarity of responsibility for disclosure.

While legislation will provide doctors with medico-legal clarity when it comes to apologising, Open Disclosure policies can fail without an organisational culture that supports open disclosure. Open disclosure is stressful and time consuming. Often it can take some time to establish the facts, there may be differences in opinion or a breakdown in communication. The evaluation of the HSE's National Open Disclosure pilot identified a number of critical success factors to Open Disclosure and recommended that the roll-out across the HSE include a supportive hospital environment and supportive organisational culture,

leadership, sufficient resources within the hospital including a risk management department with expertise to support and engage clinical and non-clinical staff in Open Disclosure, good quality training, clear guidance on reporting and multi-disciplinary approaches to reporting and learning. In addition to developing standards for open disclosure, the Department of Health, the HSE and other healthcare organisations must ensure that all the supportive structures and resources are in place to support Open Disclosure not only in hospitals but also in general practice and community settings including education and training programmes, support from colleagues and line managers, guidance material, counselling services, risk management teams. There must be some recognition that Open Disclosure will reduce time spent on clinical duties.

Finally greater focus must be made on prevention of patient safety incidents. IMO doctors are increasingly concerned about the effects of successive budget cuts and reduced staffing levels on patient safety and quality of care. OECD figures from 2013 show that Irish public hospitals operate at 93.8% capacity, a figure well over the established safe occupancy threshold of 85%, and above the identified 92.5% tipping point that has been shown to result in significantly higher patient mortality, due to rationing of resources and elevated stress levels. The largest barrier to patient safety in the country is the low number of medical specialists per head of population and the inadequate distribution of resources based on medical or social need. Our health services are significantly over stretched and clinicians are dealing with a constant stream of emergency patients without time or resources to adequately engage in audit and patient safety and quality improvement initiatives.

It is imperative that all clinical services operate with sufficient minimum financial and manpower resources necessary to provide safe, quality, evidence-based care.