CIS Obstetrics Forum 9
Farmleigh House

William Kennedy
Tuesday 11\textsuperscript{th} February 2014
Medical Practitioners Act 2007
Regulation

• Registration (Part 6)
• Disciplinary procedures (Part 7, 8 and 9)
• Education and Training / Standards (Part 10)
• Maintenance of professional competence (Part 11)
• Provision of ethical guidance (Section 7)
Disciplinary procedures

- Ethical Guide
- Professional misconduct
- Poor professional performance
- Relevant medical disability
- Section 57 and other grounds
- Parts 7, 8 and 9. PPC/FTPC and Sanctions
- Standard of proof.
Professional misconduct

• *O’Laoire v Medical Council unreported High Court January 1995*

• Conduct which is “infamous” or “disgraceful” in a professional respect is “professional misconduct” within the meaning of S. 46(1) of the Act.

• Conduct which would not be “infamous” or “disgraceful” in any other person, if done by a medical practitioner in relation to his profession, that is, with regard either to his patients or to his colleagues, may be considered as “infamous” or “disgraceful” conduct in a professional respect.

• “Infamous” or “disgraceful” conduct is conduct involving some degree of moral turpitude, fraud or dishonesty
• The fact that a person wrongly but honestly forms a particular opinion cannot of itself amount to infamous or disgraceful conduct in a professional sense.

• Conduct which could not properly be characterised as “infamous” or “disgraceful” and which does not involve any degree of moral turpitude, fraud or dishonesty may still constitute as “professional misconduct” if it is conduct connected with his profession in which the medical practitioner concerned has seriously fallen short, by omission or commission, of the standards of conduct expected among medical practitioners.
Dr. McCandless at a hearing before the Professional Conduct Committee of the GMC on 16th March 1995 was found guilty of serious professional misconduct and a direction was name that his name should be erased from the Register of Medical Practitioners.

The charges alleged errors in his diagnosis of three patients and failure to refer them to hospital. Two subsequently died and the other was found on her eventual admission to hospital to be seriously ill. It was not necessary to go into detail as Dr. McCandless, through his legal representative, accepted that the Committee’s findings of fact were not open to any material dispute.

It was argued that the Committee in applying an objective standard had applied the wrong test as to what constitutes serious professional misconduct.

Dr. McCandless claimed that serious professional misconduct involves conduct which is morally blame worthy, requiring an explanation of why the doctor gave the treatment which he gave. It should exclude honest mistakes.
McCandless v General Medical Council
BMLR 1995

- Their Lordships held that the words serious professional misconduct were and are intended by the GMC to mean the same as those which they replaced “infamous conduct in a professional respect”. The authorities of the old wording did not speak with one voice and were of little assistance in interpreting the phrase “serious professional misconduct”. The extension of the possible penalties available to the committee to include suspension and the imposition of conditions suggested that the phrase was intended to include serious cases of negligence. Since the public had higher expectations of self-governing healthcare professionals, their governing bodies had a corresponding duty to protect the public against the genially incompetent as well as the deliberate wrongdoers.

- Once it has been accepted that seriously negligent treatment can amount to serious professional misconduct then it seems to their Lordships that the appeal must fail. The eminent medical practitioners who sat on the committee came to the conclusion that Dr. McCandless’ treatment of his three patients fell deplorably short of the standards to which patients are entitled to expect from General Practitioners. In the circumstances it is scarcely surprising that they concluded that Dr. McCandless was guilty of serious professional misconduct.
Poor professional performance

“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.
Poor professional performance

- 5th Shipman Report - Chapter 24.10
  - Competence – describes knowledge and skills i.e. what the doctor can do.
  - Performance – describes what the doctor does within actual practice i.e. what he/she does do.
- Prior to 1st November 2004 the GMC assessed whether the professional performance of the practitioner was found “to have been seriously deficient”.
- *Krippendorf v General Medical Council* [2001] 1 WLR
  - This case concerned a consultant in community paediatrics and the GMC received a complaint concerning her technique in administering vaccinations to children.
Emergency Measures

• Applications pursuant to section 60 of the MPA 2007
• Public interest at risk
• Case Law
  – *Casey v Medical Council* [1999] IR
  – *Medical Council v PC* [2003] IR
• Applications at High Court
• Suspension until disciplinary proceedings have been determined
## Statistics

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Obstetricians and Gynaecologists

• Complaints
• Inquiries
• Sanctions
Poor Professional Performance

• ‘Deficient professional performance’. Is conceptually separate both from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctors work

• A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute ‘deficient professional performance’
Other items of note

- Hermann *v* Medical Council (Charleton J. 2010)
- Corbally *v* Medical Council (Kearns P. 2013)
- Prendiville Murphy *v* Medical Council and Others (Kelly J. 2007)