

A Lawyer's View on Midwifery Regulation

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22 November 2018

- Purpose of all forms of professional regulation
 - Protect the public
 - Declare and uphold standards
 - Maintain confidence in the profession
- Object of the Nursing and Midwifery Board under Section 8 of the Nurses and Midwives Act 2011:
 - To protect the public in its dealing with nurses and midwives
 - To ensure the integrity of nursing and midwifery practices

- Modern regulation has evolved over 100 years since enactment of Midwives (Ireland) Act 1918
- Midwives Act 1944
- Nurses Act 1950
- Nurses Act 1985
- Nurses and Midwives Act 2011
- Prior to this ...

Pre 1918

1300s evidence of baptism by midwives

1450 John Myrc in “Instructions for Parish Priests” set out duties of midwives in emergencies – including to have clean water, to baptise the child once head and neck were delivered and to carry out caesarean section to save child’s life where mother had died.

From 1500s to 1700s system of Church Licensing – expected to have a degree of professional competence and have had proper instruction in baptism. Could be subjected to Church trial if practised without licence and could be punished by fine or excommunication.

1649 Book of Oaths – midwife expected to help rich and poor alike, to insist mother name true father, the child shall not be murdered, maimed or exposed to avoidable peril, shall not use witchcraft, charms, sorcery, unlawful prayers or abortifacients, shall not demand an unusual fee, arrange for a secret delivery, disclose professional confidences or permit the secret or improper burial of a stillborn infant. Unprofessional acts of other midwives and the practise of midwifery without a licence were to be reported to the Bishop.

1642 – authority to licence midwives given to physicians and surgeons at Surgeons Hall

Mid 1800s formal training courses offered by hospitals/ physicians for midwives

Midwives Act 1902 – England and Wales only

Midwives (Ireland) Act 1918

- An Act to secure the better training of Midwives in Ireland and to regulate their practice
- Established Central Midwives Board for Ireland
- Roll of Midwives
- Certification of midwives
 - Offence to hold oneself out as midwife or to attend a birth unsupervised if not certified
 - Offence to give false information in procuring certification
 - Recognition of existing midwives
- Regulation of training and examinations
- Setting scope of practise
- Recognition of qualifications obtained outside Ireland

Midwives (Ireland) Act 1918

- Sanctions for disobeying rules/regulations set by Board or for other misconduct
 - Removal from roll of midwives
 - Suspension from roll of midwives
 - Interim suspension
 - Prohibition from attending at birth of child in any other capacity
- Right of Appeal to High Court or Local Government Board
- Authorising suspension where being prosecuted for offence under Act
- Local supervision of midwives - investigation of charges of malpractice, negligence or misconduct; suspension to prevent spread of infection; powers of entry

Midwives Act 1944

- Repealed Midwives (Ireland) Act 1918
- Expanded disciplinary system
 - Central Midwives Board given power to remove name of midwife from roll of midwives, or to caution, reprimand or suspend a midwife for period up to 12 months
 - Grounds:
 - Guilty of infamous or disgraceful misconduct or professional misconduct
 - Convicted of treason, felony, misdemeanour
 - Convicted of offence under the Act
 - Disobeyed rules made by the Board under the Act
 - Physically or mentally unfit to attend women in childbirth

Midwives Act 1944

- Procedures – evidence on oath, power to summon witnesses, power to require production of documents
- Entitlement to answer allegations
- Right of appeal to High Court or Minister for Local Government and Public Health
- Interim suspension of registration pending Board decision

Midwives Act 1944

- Local Supervising Authority retained general supervision of midwives practising in their district
- Responsible for preliminary investigation of complaint that a midwife disobeyed Board rules or was guilty of other misconduct – report to Board if consider prima facie case
- Could suspend pending decision by Board to institute proceedings for removal of registration or pending conclusion of proceedings in District court for offence under Act
- Could suspend to prevent spread of infection

Nurses Act 1950

- Established An Bord Altranais
- The Central Midwives Board and General Nursing Council dissolved
- Established the Midwives Committee – responsible for disciplinary regime
- Provided for a Register of Nurses with a Midwives Division

Nurses Act 1985

- Repealed Nurses Act 1950 and remaining sections of Midwives Act 1944
- Health Boards had responsibility for supervision of midwives
- Established Fitness to Practise Committee to consider complaints about nurses and midwives. Further developed system introduced in 1944 Act.
- Power to erase from register, suspend, attach conditions, advise, admonish or censure
- Interim suspension
- Procedures
 - Initial screening, inquiry by Fitness to Practise Committee, power to compel witnesses and documents, appeal to High Court, confirmation of sanction by High Court
- Grounds:
 - Professional misconduct
 - Unfitness to practise due to a physical or mental disability

O'Laoire v Medical Council

Professional Misconduct

- (1) Conduct which is infamous or disgraceful in a professional respect
- (2) Conduct which would not be infamous or disgraceful in any other person, if done by medical practitioner either to his patients or to his colleagues, may be considered infamous or disgraceful in a professional respect
- (3) Infamous or disgraceful conduct is conduct involving some degree of moral turpitude, fraud or dishonesty.
- (4) 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.
- (5) Conduct which would not properly be characterised as infamous or disgraceful and which does not involve any degree of moral turpitude, fraud or dishonesty may still constitute 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

Approved in *Perez v An Bord Altranais* as applicable to 1985 Act

Nurses and Midwives Act 2011

- Expanded grounds for complaint – including new concept of poor professional performance
- Three stage process
- No right of appeal where minor sanctions imposed
- Obligation to impose sanction where finding made
- Range of sanctions increased – including imposition of fine
- Lay majority – Board and disciplinary committees
- Public inquiries