From bedside to Court side-
The impact of Article 40.3.3 on maternity care and practices

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Background

• Article 40.3.3
  – vindicate the "right to life of the unborn" due regard for "the equal right to life of the mother"

• X case 1992- risk to life as opposed to health

• A,B,C cases 2010

• Savita Hallapanavar 2012

• The Protection of Life During Pregnancy Act 2013
  – Legislation plus regulation
Aim

• The aim of this paper is to bring a health practitioner perspective to discussions centered on the direct impact of Article 40.3.3 on medical and health related issues in maternity care.
Testing the water

- Protection of Life During Pregnancy Act has effect from Jan 1st 2014
- Guidance Document for Health Professionals Sept 19th 2014
- Summary of the legal procedures for
  - Certification and Medical Procedure
- Section 7- physical illness
- Section 9- mental illness (suicide)
Multidisciplinary analysis of 3 scenarios

• Irish Research Council Funding to explore what lawyers and clinicians would consider to be appropriate treatment under the Act (2013)

• Participants- 4 lawyers, 21 clinicians

• Two multidisciplinary groups

• Two researchers- one clinician, one lawyer
Case study 1

• An oncology diagnosis at 6 weeks gestation

• Key issues
  – Usual treatment cannot be given
  – Impact on longterm prognosis to be considered
  – Does case fulfil the criteria for substantial risk to life of the mother?
Case study 2

<table>
<thead>
<tr>
<th>Test</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Is there a real and substantial risk of loss of the pregnant woman’s life from a physical illness?</td>
</tr>
<tr>
<td>3</td>
<td>Based on the reasonable opinion of the doctor, is this risk one that can only be averted by a termination of pregnancy?</td>
</tr>
<tr>
<td>4</td>
<td>In arriving at this opinion, has the doctor had due regard to the need to preserve the life of the unborn as far as practicable?</td>
</tr>
</tbody>
</table>

- A 17 year old woman, little education, no family support
- Unwanted pregnancy now 20 weeks- in Cardiac failure
- Key issues
  - Usual treatment cannot be given (transplant)
  - What obligations exist in fetal interest?
  - Does case fulfil the criteria for substantial risk to life of the mother?

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Cases of Public Interest

- **P.P. v. Health Service Executive [2014] 12 JIC 2601**
  - Brain stem death
  - Artificially sustained due to pregnancy in pursuance of Article 40.3.3
  - Clinicians concerned not to do anything that could “get them into trouble from a legal point of view and were awaiting legal advice”.
  - Absence of evidence

- **Article 40.3.3**
  - 3° The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

- **Ms Y v. Health Service Executive & Ors, [2016] IEHC 136 (2016)**
  - s. 9 of the Protection of Life During Pregnancy Act 2013
  - HSE secured a High Court order to hydrate Ms. Y
Capacity of a pregnant woman to consent or refuse medical treatment

- *Health Service Executive v. B & Anor* [2016] IEHC 605
- Articles 40.3.3, 40.4.2 and 42A
- HSE National Consent Policy page 41, Section 7.7.1

"because of the Constitutional provisions on the right to life of the unborn [Article 40.3.3] there is significant legal uncertainty regarding a pregnant woman’s right to [consent]."

- This is in contrast to section 7.7 relating to non-pregnant adults:
  "When consent is refused if an adult with capacity to make an informed decision makes a voluntary and appropriately informed decision to refuse treatment or service, this decision must be respected, even where the service user’s decision may result in his or her death".
Conclusion- The impact of Article 40.3.3 on maternity care and practices

• Significant clinical challenges in the application of legal frameworks within complex cases
• Many cases unrelated to the issue of termination of an unwanted pregnancy
• Extent to which the right to life of the unborn is to be vindicated causes dilemmas and constraints in practice
• Inherent clinical risk
• UN Committee on Human Rights findings
• Legal uncertainty as to the woman’s right to consent (or refuse) treatment
• Court ordered medical intervention
Thank you

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