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 vigorous competition drives productivity growth, innovation and value for all
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Submission to the Department of Health and Children on the Draft Medical Practitioners Bill 2006

Submission S/06/005

September 2006



Introduction

- 1.1 The Competition Authority welcomes the publication of the draft Medical Practitioners Bill 2006, particularly noting that the draft bill has been through a thorough Regulatory Impact Assessment. The Authority recognises that the Minister for Health & Children is undertaking a comprehensive reform of the legislation regulating medical practitioners, to both enhance standards in the profession, and improve patient safety, care and representation..
- 1.2 The Competition Authority particularly welcomes:
- The significantly more balanced membership of the Medical Council;
 - The considerable emphasis on openness and transparency as promoted by the Government's White Paper *Regulating Better*;
 - The streamlined registration process for medical practitioners from overseas; and
 - The improved fitness to practise provisions.
- 1.3 These improvements in the way medical practitioners are regulated will increase the likelihood that the regulatory system will work in the best interests of patients and help instil greater public confidence in the regulatory system.
- 1.4 The Competition Authority does, however, have a number of remaining concerns, and these are set out below, with suggested amendments to the draft Bill where appropriate, to further enhance the transparency and level of consumer protection provided for in the Bill.

Composition of the Medical Council & its Committees

- 1.5 In other health professions, the composition of regulatory bodies has been amended or set up so as to represent a broader range of stakeholders than the profession being regulated.¹ Indeed, an emerging trend is for a *majority* of the governing body of a statutory regulatory body for a profession to be composed of non-representatives of the profession being regulated. This increases the likelihood that a broad range of views are considered when decisions are being made which affect both the profession and the users of health services.

¹ Health and Social Care Professionals Act 2005

1.6 The Competition Authority therefore welcomes the provision for a significantly more balanced membership of the Medical Council to include other stakeholders (*Head 19*) as shown in the table below.

- The Medical Council will consist of 25 members, seven of whom will be directly nominated by the medical profession and five who will be nominated by the medical schools, and who are also likely to be doctors.
- The remaining 13 members will not be nominated or elected by the medical profession; however they may include some medically qualified persons.
- Seven of the 25 members will be precluded from being medical professionals.

Composition of the New Medical Council

Number	Profession	Nominated By
7	Doctors	Doctors
2	Not specified	Medical schools
3	Not specified	Postgraduate medical training bodies
7	Members of the public or advocacy groups (Non-doctors)	The Minister for Health & Children
2	Not specified	The Minister for Health & Children
1	Not specified	Royal Irish Academy
1	Not specified	Health Service Executive
1	Nurse/Midwife	An Bord Altranais
1	Health & Social Care Professional	Health & Social Care Professionals Council
25		

1.7 Some concerns remain, however. Given the proposed composition of the Council, there is no guarantee that a majority of the Council will be lay members. To ensure a better representation of the public interest, the Competition Authority recommends that the Minister's nine nominees to the Council should not be medical practitioners. An appropriate amendment should be made to paragraph *(h)* and/or *(i)* of *Head 19(2)* in this regard. This will help to ensure that the medical profession is regulated in the interests of protecting consumers from harm with regulations that are proportionate and that do not unnecessarily hinder competition between medical professionals.

1.8 Each member of the Medical Council will be required "to declare any material interest they may have in specified matters, if necessary, to absent themselves

from proceedings or discussions relating to such matters and to not participate in any decisions relating to a specified matter in which they have a material interest" (Head 32). In the interests of transparency, these declarations should be publicly available.

- 1.9 The Competition Authority particularly welcomes the fact that a majority of the members of the Professional Conduct Committee will not be medical practitioners (*Head 22 (6)*). This Committee will investigate complaints against medical practitioners, referred to it from the Preliminary Proceedings Committee, in cases where there is sufficient cause to warrant further action.

Duties of the Medical Council

- 1.10 The Competition Authority welcomes the increased openness and transparency which certain provisions of the Bill will bring, in line with Government policy in the White Paper *Regulating Better*, particularly the following policies which will significantly improve the transparency of the current system and give interested parties the opportunity to be heard:

- The Medical Council will have to publish for public comment advance drafts of any rules it proposes to make (*Head 13(5)*) or an amendment or revocation of a rule (*Head 13(7)*); and
- The Medical Council will be required to produce and publish a strategy statement (*Head 14, 15*), an annual business plan (*Head 16*) and an Annual Report no later than three months after the end of each financial year (*Head 18*).

- 1.11 The Competition Authority recommends that the Medical Council should also be obliged to publish minutes of all Council meetings on its website, to enable members of the public and interested parties to keep abreast of the work of the Council and to ensure that the Council remains open and transparent in the performance of its functions.

Registration of Medical Practitioners

- 1.12 The Bill provides for a more streamlined registration process for medical practitioners, including those from non-EU/EEA countries who have non-EU/EEA qualifications of a sufficient standard. The Competition Authority welcomes the improved registration process as this will assist in the supply of doctors to meet demand for medical services. The Council will be in a position to grant registration to persons from a broad range of countries in a simple manner, once it has satisfied itself as to the standard of the qualifications. The improvements to the registration process will be particularly useful in the case of individuals who wish to be registered on the register of specialists.

- 1.13 Each division of the Register of Medical Practitioners established and maintained by the Medical Council should be available to the general public on its website to access free of charge. This will facilitate consumers who may wish to check whether a particular doctor/specialist is registered and his/her qualifications and thus be a useful consumer protection tool. The Competition Authority recommends that the Register should be updated on a regular basis.

Fitness to Practise

Professional Misconduct

- 1.14 Generally, the term “professional misconduct” has not been defined in legislation relating to regulation of professions. This has resulted in the situation where anti-competitive practices (such as bans on advertising, either generally or as regards fees, bans on accepting clients of a fellow-professional without the latter’s “permission”, and fee undercutting) are often interpreted by the statutory body as professional misconduct.
- 1.15 The Competition Authority therefore welcomes the effort to define “*professional misconduct*” (*Head 57*), particularly references to conduct that is “*infamous*”² or “*disgraceful*”³, involving some degree of moral turpitude, fraud or dishonesty.
- 1.16 However, the Authority also recommends that professional misconduct should be defined to explicitly exclude conduct which is likely to enhance competition (e.g. price competition, advertising etc).
- 1.17 Finally, the actual drafting of the definition of “professional misconduct” in *Head 57* needs further refinement, as paragraphs (a) and (particularly) (d) thereof appear internally incoherent and self-contradictory.

Professional Conduct Committee

- 1.18 The Competition Authority welcomes the requirement that, in general, hearings of the Professional Conduct Committee are to be held in public (*Head 67*). It should be made clear in the Bill that a majority of non-medical practitioners actually present and voting will be necessary for a final decision to be taken by that Committee.
- 1.19 *Head 87* provides for the Medical Council to notify the general public of sanctions imposed against individual medical practitioners or cases where a person is restored to a register or conditions attached to a person’s registration is removed, “*if satisfied that it is in the public interest to do so*”. In the interests of transparency, the Medical Council should be obliged to inform the

² Oxford English Dictionary: Infamous = notoriously vile; evil; abominable.

³ Oxford English Dictionary: Disgraceful = causing disgrace; shameful.

public of all cases where sanctions are imposed. It should not be at the discretion of the Council. Details of the nature of the complaint made against the medical practitioner and the sanction imposed should be published by the Council. This information is of value to members of the public to help them make informed decisions about which medical practitioner they choose to attend.

- 1.20 It should be at the discretion of the Courts to direct the Medical Council to publish any reports or documents relating to a disciplinary matter.
- 1.21 The Medical Council should be obliged to publish the total number of complaints it receives against medical practitioners in a particular time period (e.g. one year), the nature of these complaints and how many were successfully dealt with or if they were referred on to another body.

Maintenance of Professional Standards

- 1.22 Despite the welcome attempts to define “professional misconduct”, there is still a significant lack of clarity in various provisions of the Bill as regards professional standards, conduct, competence, behaviour and ethics. These concepts tend to appear somewhat interchangeably throughout the Bill, and more clarification and definition is required in the Bill as to what the distinction is between these concepts, and where the boundaries between them lie.
- 1.23 One of the functions of the Medical Council is to specify “*standards of practice for registered medical professionals*” including the establishment of “*guidance on professional conduct and ethics*” (Head 8(g)). Head 90(10) then allows the Council to refer to the Preliminary Proceedings Committee a complaint that a doctor “*may have committed a serious breach of its guidance on ethical standards and behaviour*”. On the assumption that “*ethical standards and behaviour*” are distinct from rules on professional conduct, some detail is required in the Bill as to what is being referred to by this term. It would seem that a distinct Head is required to define ethical standards and behaviour, how (or if) they are different to professional misconduct, and whether such (ethical) standards will be in Council Rules (and therefore have to be published for comment in advance).

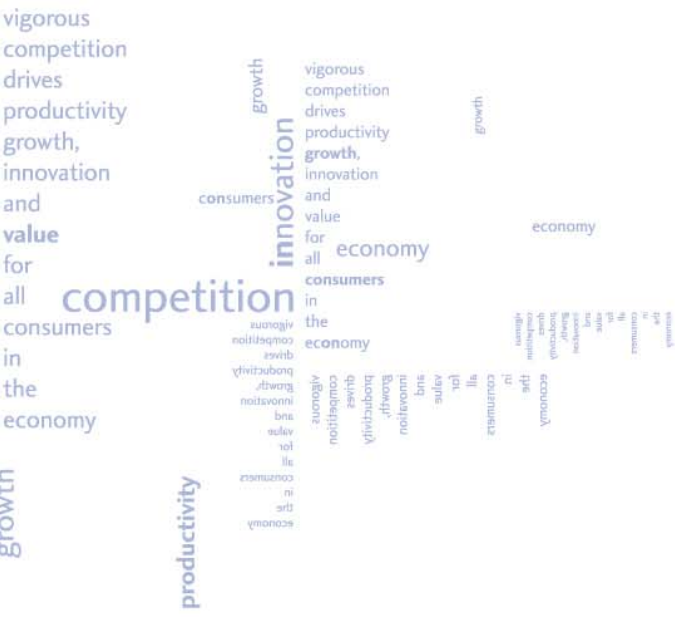
Medical Education & Training

- 1.24 The Competition Authority welcomes the provisions included in the Bill which will place specific responsibilities on the Health Service Executive “*...to undertake appropriate medical and dental practitioner workforce planning for the purpose of meeting medical and dental specialist staffing and training needs of the health service on an on-going basis*” in co-operation with medical

and dental training bodies (*Head 95 (2)(c)*), and "...to assess and make proposals to the Council, on an annual basis, of the numbers of medical specialist training posts required by the health service" (*Head 95(2)(d)*). This will facilitate a better match between demand for medical practitioners and the supply of medical practitioners. However, it needs to be made clear that it is not a function of the HSE to place any upper limit on the number of training places available, either generally or in any specific location or for any particular purpose.

Conclusion

- 1.25 The Competition Authority welcomes the publication of the Draft Medical Practitioners Bill 2006. The Bill provides for a transparent and accountable system for the regulation of the medical profession which will provide safeguards for the public that all medical practitioners are appropriately qualified and competent to practise. Changes to the composition of the Medical Council and its duties are welcomed, as are the more streamlined registration process for medical practitioners from overseas, the improved fitness to practise regulations and the new role of the Health Service Executive in manpower planning for medical practitioners.
- 1.26 There are, however, a number of concerns still remaining, and these should be addressed to ensure that the new regulations work in the best interests of consumers of medical services.
- 1.27 Representatives of the Competition Authority would be happy to meet the Department of Health and Children to discuss the contents of this submission, or amplify it in any way deemed helpful.



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