

## Statement on the Status of Legal Protection for the National QA Programmes

Prepared by

### The Steering Committee of the National QA Programmes in Histopathology and Radiology

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The Steering Committee of the National QA Programmes in Histopathology and Radiology recognises that Clinicians participating in the QA Programmes have expressed some concern regarding disclosure of findings about individuals taking part in the Programmes. It is further recognised that to encourage participation in clinical audit and quality assurance Clinicians need to be assured that it will not be used against them in a punitive manner.

The Report of the Commission on Patient Safety and Quality Assurance 2008, chaired by Dr Deirdre Madden also acknowledged a number of challenges to clinical audit including the current legal status of disclosure.

The relevant existing legislation comprises the Freedom of Information (FOI) Act 1997 and 2003, the Data Protection Act 1988 and 2003 and the Medical Practitioners Act 2007. The Data Protection Act is about an individual's right to privacy. As the national data for the QA Programmes will have encrypted patient identification, the QA Programmes will be compliant with the Data Protection Act. The FOI Act has protection for clinical audit, however this is limited as it is subject to a public interest override. Similarly the Medical Practitioners Act requires Clinicians to participate in a Professional Competence Scheme, for which clinical audit is a requirement and Section 95 of the Act exempts its discovery from FOI, though not a court order.

The Steering Committee of the National QA Programmes in Histopathology and Radiology recognises that new legislation for health information could be framed in a way that supports and facilitates health professionals in implementing the QA programmes.

The Report of the Commission on Patient Safety and Quality Assurance 2008 made a number of recommendations on clinical audit and quality assurance activities for patient safety which are:

**R7.11** *Legislation should be enacted to give exemption from Freedom of Information legislation and to grant legal protection from disclosure to data related to patient safety and quality improvement that are collected and analysed by healthcare organisations for internal use or shared with others solely for purposes of improving safety and quality.*

**R7.12** *If clinical audit is to be granted any such exemption or legal privilege, organisations or clinicians who participate in clinical audit must publish aggregated information about clinical audit.*

**R7.13** *Such legislation must include routes to refer to appropriate professional regulatory bodies where there is evidence that there are serious and continued variations in performance from agreed standards of care*

**R7.14** *Such legislation must also include the obligation to refer to other legal authorities such as An Garda Siochana where there is evidence that a serious offence has been committed.*

A new Health Information Bill is under development by the Department of Health and Children. It is their intent to legislate for the recommendations of the Report of the Commission on Patient Safety and Quality Assurance 2008.

The Steering Committee of the National QA Programmes in Histopathology and Radiology propose that the legislation sets out “deemed status” for the QA Programmes such that they qualify in their entirety for the exemption. The QA Programmes will publish aggregate national data, do not have access to individual data and do not have any remit over individual performance management. This remains with the local hospital where the normal mechanisms for professional competence and performance management are in place. In order to achieve “deemed status” for the QA Programmes, the Steering Committee will continue to engage with the Department of Health and Children and the Clinical Effectiveness Committee<sup>1</sup>.

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<sup>1</sup> Clinical Effectiveness Committee was established as part of the Patient Safety First Initiative