

# Atheist Ireland

Submission to Joint Health Committee on  
Constitutional issues re the National Maternity  
Hospital and the Irish Catholic Bishops'  
Code of Ethical Standards for Healthcare



15 March 2022

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## 1. Introduction to Atheist Ireland

Atheist Ireland promotes atheism, reason, and an ethical, secular society. Since being formed in late 2008, we have campaigned for a secular Irish constitution, parliament, laws, government, and education and healthcare systems. We are partners in the dialogue process between the Government and religious and nonreligious bodies. We have addressed various Oireachtas Committees, the Constitutional Convention, Citizens Assembly, United Nations Committees, the OSCE, Council of Europe bodies, and the Presidents of the European Union.

## 2. Article 44.2.5 of the Constitution and Religious Denominations

We are making this submission in relation to the National Maternity Hospital and St. Vincent's. We are concerned about the Constitutional issues around the availability of reproductive rights in the hospital. Our Constitution was heavily influenced by Catholic Church teaching. There are Articles in our Constitution that protect the interests of charitable institutions with a religious purpose.

Article 44.2.5 states that:

“Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.”

But what is a 'religious denomination' in this context, and how can it 'manage its own affairs'? The Supreme Court examined this question in 1997, when it was testing the constitutionality of Section 37 of the Employment Equality Act. In that case the Supreme Court found that: <sup>1</sup>

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<sup>1</sup> [www.supremecourt.ie/supremecourt/sclibrary3.nsf/\(WebFiles\)/EB802820AD644CFC802575F3003323B1/\\$FILE/Employment%20Equality\\_%5B1997%5D%20%20IR%20321.htm](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/(WebFiles)/EB802820AD644CFC802575F3003323B1/$FILE/Employment%20Equality_%5B1997%5D%20%20IR%20321.htm)

“The term ‘religious denomination’, was therefore intended to be a generic term wide enough to cover the various churches, religious societies or religious congregations under whatever name they wished to describe themselves.

These various religious denominations may control religious, educational or medical institutions, whether directly or through a board of guardians or trustees and it appears to the Court that these are the religious educational and medical institutions referred to in s. 37. sub-s. 1 of the Bill and that they are also governed by the phrase ‘institutions for religious or charitable purposes’ referred to in Article 44, s. 2 sub-s. 5 of the Constitution.”

### **3. St Vincent’s Holdings and Healthcare Group**

We accept that the proposed structure for owning and running the planned new maternity hospital is complicated. The Religious Sisters of Charity currently own the land as Catholic Church property, and the Vatican has to authorise any change in its use.

If the deal goes through, there would be a series of companies, with a new St. Vincent’s Holdings becoming shareholders of St. Vincent’s Healthcare Group, which would include the new National Maternity Hospital and three other existing hospitals.

The main registered charitable object of St. Vincents Holdings is: <sup>2</sup>

“to advance healthcare in Ireland... by promoting medical education, medical research and patient care... through the St. Vincent’s Healthcare Group and to reflect compliance with national and international best practice guidelines on medical ethics and the laws of Ireland through the provision of support to companies which are registered as charities... and which are the Company’s subsidiaries.”

The registered charitable objects of St. Vincent’s Healthcare Group include: <sup>3</sup>

“1. To provide Inpatient and outpatient healthcare services on the campus of SVHG Ltd i.e. St. Vincent’s University Hospital, St. Michael’s Hospital, Dun Laoghaire and St. Vincent’s Private Hospital. 2 To conduct and maintain the Facilities in accordance with the Health Care Philosophy and Ethical Code of the Religious Sisters of Charity.”

The Health Care Philosophy and Ethical Code of the Religious Sisters of Charity is not available on line. St. Vincent’s University Hospital have this document but have refused to release it under the Freedom of Information Act.

One of the reasons for refusal was they said that the record in question is a document which was developed by and relates to the Religious Sisters of Charity and the Sisters don’t come under the FOI Act. They also said that this record has been superseded by a new ethical code. This issue is now with the Information Commissioner.

Private religious institutions such as the Sisters of Charity do not come under the FOI Act. The response to the FOI request from St. Vincent’s raises further questions because St. Vincent’s Holdings still promote patient care through St. Vincent’s Healthcare Group, which has its own ethical code.

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<sup>2</sup> <https://www.charitiesregulator.ie/en/information-for-the-public/search-the-register-of-charities/charity-detail?srchstr=vincents%20holding&regid=20204684>

<sup>3</sup> <https://www.charitiesregulator.ie/en/information-for-the-public/search-the-register-of-charities/charity-detail?srchstr=St.%20Vincent%E2%80%99s%20Healthcare%20group&regid=20045555>

St. Vincent's Holdings state that they have updated their ethical code. That updated ethical code does not give assurance that full reproductive healthcare will take place. St. Vincent's Holdings will still be promoting patient care through the St. Vincent's Healthcare Group and the Health Care Philosophy and Ethical Code of the Religious Sisters of Charity.

The Department of Health response to the FOI request for the Document said that they did not have the Document despite the fact that it was part of the negotiations and the fact that St. Vincent's Holdings promote patient care through St. Vincent's Healthcare Group.

#### **4. Irish Catholic Bishops' Code of Ethical Standards for Healthcare**

The Constitution of St. Vincent's Holdings state that their Subsidiary Objects are:

“to advance medical education, promote medical research and patient care in all areas of medicine through the St. Vincent's Healthcare Group (to reflect compliance with national and international best practice guidelines on medical ethics and the laws of the Republic of Ireland

And to be true to its core values of:

(a) Human Dignity: Respect the dignity and uniqueness of each person.”

There seems to be no conflict with St. Vincent's Holdings constitution and the Code of Ethical Standards for Healthcare of the Irish Catholic Bishops' Conference, published in 2018. This code states: <sup>4</sup>

“Respect for the Rule of Law

8.3 Every society depends for its coherent functioning and for the attainment and preservation of the common good, on the observance of the rule of law. The common good presupposes respect for the person as such.

In the name of the common good, public authorities are bound to respect the fundamental and inalienable rights of the human person. As a basic principle, the presumption is always in favour of the law. In other words, in the event of any conflict between personal preference and the rule of law, the law must be obeyed.

If a particular law conflicts with the fundamental and inalienable rights of the human person, however, it conflicts with the common good and with reason and does not command obedience.”

#### **5. Article 44.2.5 of the Constitution and St Vincents**

St. Vincent's Holdings state that their 'charitable objects' reflect compliance with national and international best practice guidelines on medical ethics and the laws of Ireland. Section 37 of the Employment Equality Act is part of the laws of Ireland. The question is whether or not St. Vincent's is defined as a medical institution subject to Section 37, and consequently governed by Article 44.2.5 of the Constitution.

According to the Supreme Court a medical institution does not need to be directly controlled by a religious congregation to be subject to Section 37 of the Employment Equality Act, and

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<sup>4</sup> Code of Ethical Standards for Healthcare, The Consultative Group on Bioethics and the Council for Healthcare of the Irish Catholic Bishops' Conference, published by Veritas 2018

consequently governed by Article 44.2.5. Section 37 of the Employment Equality Act also refers to institutions under the 'direction' of bodies established for religious purposes.

The charitable object of St. Vincent's Holdings is to

'promote... patient care... through the St. Vincent's Healthcare Group' and the charitable objects of St. Vincent's Healthcare Group includes to 'conduct and maintain the Facilities in accordance with the Health Care Philosophy and Ethical Code of the Religious Sisters of Charity'.

So how would Article 44.2.5 of the Constitution (under which every religious denomination shall have the right to manage its own affairs) as interpreted by the Supreme Court (under which they may control medical institutions either directly or through a board of guardians or trustees), influence the new publicly funded Maternity Hospital with its proposed structure?

If a Catholic religious institution runs a medical institution that carries out terminations then how can it still be defined as a Catholic religious institution? If St. Vincent's is governed by Article 44.2.5, then could St. Vincent's healthcare Group or Holdings argue that the State is undermining freedom of religion (Article 44.2.1), disrespecting religion (Article 44.1) and undermining its right to manage its own affairs under Article 44.2.5?

Article 44.2.5 would have no meaning if a Catholic religious institution could not manage its own affairs by forbidding terminations under any circumstances.

## **6. 'Formal Cooperation in Wrongdoing' and 'Scandal' in the Catholic Code**

The Code of Ethical Standards for Healthcare of the Catholic Bishops' Conference states:

"Formal Cooperation in Wrongdoing

8.9 On the basis of reflection on questions like these, the Church has come to distinguish between 'formal' and 'material' cooperation.

Cooperation is formal if the intended 'object' (purpose) or 'end' (including the chosen means) of one's action is precisely to contribute to the other's wrongful conduct, or if one otherwise shares in the other party's 'bad will'. For example, if a Catholic facility refers patients to another facility intending that they undergo abortions there rather than on its own premises, such a referral would involve formal cooperation in abortion.

Likewise, if a Catholic institution entered into a contractual arrangement with another party, with the intention of providing some services prohibited by Catholic teaching, such a contract would involve formal cooperation in the wrongdoing that is involved in providing those services. Formal cooperation in wrongdoing is never morally permissible.

8.10 Care must be taken to ensure that arrangements which are claimed to distance a Catholic provider from the provision of prohibited services do not implicitly involve formal cooperation. Sometimes there is no reasonable explanation for one's cooperation other than that one intends or endorses the other's wrongdoing."

"8.15 ... Catholic healthcare facilities and professionals should be reluctant to assist others, even materially, in any conduct which is contrary to sound ethics and the Christian gospel. Where possible, one should try to avoid or minimise this harm by persuading the other party not to engage in the wrongful activity; for example, by proposing alternative options or, at least, suggesting taking time for further thought."

“Scandal

8.17 .....As far as practicable, one should try to minimise scandal by explaining clearly to staff, patients, and the wider public the reasons for one’s cooperation and why the proposed cooperation is permissible according to Catholic principles Secrecy about legitimate cooperation is inappropriate....”

Most people simply cannot understand how a Catholic institution can carry out terminations and still be called a Catholic institution and provide patient care through the Ethical code of the Sisters of Charity and comply with the Code of ethical standards for Healthcare of the Catholic Bishops.

## **7. The Supreme Court in the matter of Section 37**

At the Supreme Court in the matter of Section 37 Counsel for the state had admitted that a tension existed between the right to equality guaranteed by Article 40, s. 1, the right to free profession and practice of religion guaranteed by Article 44, s. 2 and the right to earn a livelihood guaranteed by Article 40, s. 3 of the Constitution, but they submitted that the sections under discussion represent a balanced attempt by the Oireachtas to resolve these tensions. The Supreme Court accepted that Section 37 was a balance that was acceptable because:

“This Court has also had to accept that occasions may arise when it is necessary to make distinctions in order to give life and reality to the constitutional guarantee of the free profession and practice of religion. This problem first arose in *Quinn’s Supermarket v. Attorney General* [1972] I.R. 1 where the Court had to accept that certain distinctions should be made in favour of the Jewish congregations arising from the fact that the Jewish Sabbath fell on a Saturday and not on a Sunday.”

## **8. Concluding questions**

Catholic hospitals do not provide terminations. How could they be governed by Article 44.2.5 if they were legally obliged to carry out terminations when those very terminations were against their mission and purpose, and when the Supreme Court has said that occasions may arise when it is necessary to make distinctions in order to give life and reality to the constitutional guarantee of the free profession and practice of religion?

How can a balance be achieved in this instance because if a Catholic hospital carries out terminations then how can it be called a Catholic hospital governed by Article 44.2.5.?

Article 44.1 of the Constitution obliges the state to respect and honour religion. How could the State respect and honour religion while obliging a religious institution governed by Article 44.2.5 to carry out terminations when those terminations are contrary to its mission and purpose and when it undermines the constitutional guarantee of the free profession and practice of religion (Article 44.2.1)?

One of the main questions seems to be whether or not St. Vincent’s Holdings is a religious institution governed by Article 44.2.5 of the Constitution and whether Section 37 of the Employment Equality Act applies?

These legitimate questions cannot be ignored. So far the Minister for Health, Stephen Donnelly has failed to give an explanation that can get to the heart of how St. Vincent’s can provide terminations, as it would be the only Catholic Hospital in the world to do so.