



PRESS RELEASE

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**NHS GUIDANCE ON 'BEING OPEN' IS WELCOME BUT MUST BE
ACCOMPANIED BY A LEGAL DUTY**

Action against Medical Accidents ('AvMA' - the charity for patient safety and justice) has welcomed the launch today of updated and improved guidance on 'Being Open' by the NHS National Patient Safety Agency, but has demanded progress on implementing a legal duty to be open and honest with patients and relatives when things go wrong. This would be the long awaited legal 'Duty of Candour' which AvMA and others have been campaigning for years and which is also known as "Robbie's law" (in honour of Robbie Powell and his family's brave campaign following Robbie's death due to negligent care and the alleged cover up which followed). Ministers are said to be considering AvMA's proposal that a corporate legal 'Duty of Candour' should be incorporated in the forthcoming regulations for registration with the Care Quality Commission (and its equivalents in the rest of the UK). This would make it a legal requirement for any organisation registered to provide healthcare to ensure that its staff and management are open and honest with patients and their relatives when things go wrong. Failure to be able to demonstrate that this is put into practice could result in heavy fines or even de-registration.

AvMA chief executive, Peter Walsh, who will be addressing the international summit on Open Disclosure in London on Friday, timed to coincide with the launch of the National Patient Safety Agency's 'Being Open' programme, said:

"We welcome this improved guidance but it is no substitute for a legal duty. It can not be right that it remains legal for an organisation which provides healthcare to cover up when things go wrong. Health managers have so many 'must do's' from Government that they are unlikely to give this guidance the priority it deserves. The 'Being Open' guidance should be seen as a resource to help providers do what must be one of the most difficult jobs a health professional has to do in their career, but it must be under-scored by a legal duty and a promise to get tough with those who fail to implement it. Now is the time for "Robbie's law". "

AvMA says that the evidence of need for a legal Duty of Candour is compelling. AvMA regularly see examples of where there has not been openness and honesty through its casework. This sometimes causes even more harm than the original error. Also:

- A National Audit Office survey of the NHS in 2005 ('A safer place for patients') found that only 24% of NHS trusts routinely informed patients of adverse events, and 6% admitted to not informing patients at all
- The Department of Health itself described a need to tackle a 'culture of denial' in the NHS in 'Patient Safety First' (2006)

- The GMC has recently refused to even investigate allegations of forgery of medical records by doctors in an attempted 'cover up' in spite of evidence from the police and CPS and requests to do so from the local NHS Health Board (in the case of Robbie Powell)
- International research shows that being open and honest reduces the probability of litigation
- The Chief Medical Officer Sir Liam Donaldson has formally recommended a legal duty of candour ('Making Amends' 2003) and the Government has never given a satisfactory explanation as to why it has not been implemented
- Other states including Hungary, Slovenia, Denmark, Sweden, France, and Pennsylvania in the United States have successfully implemented a legal duty of candour - the UK is lagging behind.

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