

## **Action against Medical Accidents**

### **BRIEFING ON THE MEDICAL INNOVATION BILL**

**FOR REPORT STAGE, HOUSE OF LORDS, 24<sup>th</sup> OCTOBER 2014**

#### **Overview**

Action against Medical Accidents (AvMA) is the independent charity for patient safety and justice. We have over 30 years' experience of supporting people affected by medical accidents and partnership work with health professionals, providers, and policy makers to improve patient safety and justice for the injured patient/their family. This briefing sets out our main concerns; our suggested alternative for genuinely helping medical innovation; and comments on the key amendments which have so far been put down (at the time of writing).

#### **Our main concerns**

We are deeply concerned by this Bill which, although well intended, is fraught with unintended and dangerous consequences.

- We are convinced, as are most medical and legal organisations that the Bill is not needed. Existing legal and professional ethics arrangements already allow responsible innovation as was recently evidenced by the treatment of Ebola nurse William Pooley with an unlicensed drug. There is no evidence that clinical negligence litigation is in any way inhibiting responsible innovation. The response from all specialist organisations dealing with clinical negligence to the Department of Health consultation confirms this
- We agree with the many doctors and doctors' organisations who say that as well as being based on a false premise, the Bill would actually make it harder to provide innovative treatment by creating a confusing, bureaucratic set of rules set in law
- We believe that the Bill threatens patient safety in that it would make it easier for a rogue doctor, such as Dr Ian Patterson who persuaded hundreds of women in the West Midlands to undergo his 'innovative' surgery, to prey on vulnerable patients.
- The Bill would put doctors under pressure from pharmaceutical companies and desperate patients to 'try out' potentially dangerous treatments
- The Bill would leave a patient or family who has lost a loved one as a result of what would today be considered negligent treatment with no remedy under the law
- The Bill has been disingenuously promoted as being about providing a last chance to dying cancer patients. In fact, it would apply to absolutely any form of medical treatment, including purely cosmetic surgery

#### **Our suggested alternative approach: an independent commission on Medical Innovation**

Although well intended, the Bill appears to us to be based on pure emotion and anecdote. This does not make for good legislation. The Bill is restricted to changing the law of clinical negligence. As well as not being based on evidence, this is a very narrow approach which fails to address the main barriers to innovation. Medical Innovation is too important to be dealt with by a hastily prepared and ill evidenced Bill which only seeks to help innovation by depriving the injured patient of the legal remedy to which they have up to now had a right.

**We propose the establishment of an independent commission or an investigation by the Health Select Committee into all of the potential barriers which may affect medical innovation, and how medical innovation can be promoted and supported.** This evidence based approach, involving all key stakeholders, would be charged with making recommendations, including legislation if it is found to be needed. This would be a far more meaningful contribution to helping innovation and avoid the unintended consequences of the Bill if it were to become an Act of parliament.

### **KEY AMENDMENTS (at the time of writing)**

#### **Lord Saatchi's amendments:**

Lord Saatchi's amendments do nothing to address the concerns we have set out. In fact, they make the whole Bill even more confusing and bureaucratic. Doctors would have to choose between two approaches it would seem – the Bolam test approach or the Saatchi approach. Many doctors and doctors' organisations believe that the bureaucratic and confusing set of rules would make it much harder for doctors to practise responsible innovation than at present.

#### **Lord Winston's amendments:**

We welcome Lord Winston's amendments. Although the Bill is not needed at all, Lord Winston's amendments go a long way to limiting the damage of the Bill.

In particular, Lord Winston has come up with a way of limiting the remit of the Bill by excluding a range of specified types of treatment and treatment for "conditions that are not regarded as life-threatening or seriously debilitating by the broad body of responsible medical opinion." As the Bill stands, even if Lord Saatchi's amendments are accepted, the Bill would apply to any form of medical treatment – even purely cosmetic surgery.

We also welcome Lord Winston's suggestion that approval for so-called innovative treatment as defined by the Bill would have to be approved by a clinical ethics committee. Without this, even with Lord Saatchi's amendments, the final authority to go ahead with a treatment would rest with an individual doctor, whatever the advice had been from those consulted.

#### **Lord Turnberg's amendments:**

We also welcome Lord Turnberg's amendment to limit the remit of the Bill even further to " (a) a cancer which in the reasonable opinion of the practitioner is affecting the patient and is likely to cause the patient's death without the provision of effective treatment;(b) such other conditions as may be prescribed by regulations made by the Secretary of State". It should be noted that the majority of those who support the concept of the Bill do so on the misunderstanding that it specifically deals with the needs of dying cancer patients.

#### **Baroness Finlay of Llandaff's amendment**

We welcome Baroness Finlay's amendment. The Welsh Assembly has been delegated responsibility for health in Wales and it would not be right for Wales to have this legislation forced upon it.