

## February 2012

### WELCOME TO OUR LATEST UPDATE ON ISSUES CONCERNING PATIENT SAFETY AND JUSTICE

#### DUTY OF CANDOUR VOTE LOST BUT FIGHT GOES ON

An historic opportunity to make possibly the biggest advance in patient safety and patients' rights since the formation of the NHS was missed this month when the House of Lords voted against an amendment to the Health and Social Care Bill, which would have created a statutory Duty of Candour ('Robbie's Law'). The amendment was lost by just 36 votes and would easily have been carried had Liberal Democrat peers even abstained, leave alone voted for it. However a strong Government whip was applied. It will now remain the case that healthcare organisations are under no statutory obligation whatsoever not to cover up medical accidents and to be open with patients.

Focus now turns first of all to how the Government's proposed 'contractual' duty of candour might be developed to at least move things forward a little. There may also be forthcoming opportunities to raise the issue of a statutory duty again with the reviews of the NHS Constitution and the CQC regulations which are due soon.

#### LEGAL AID BILL NEARS CRUNCH POINT - ACCESS TO JUSTICE THREATENED

The controversial Legal Aid Sentencing and Punishment of Offenders Bill enters the Report stage in the House of Lords in March. This may be the last chance to obtain amendments to the Bill to limit the damage that it will undoubtedly cause to access to justice for clinical negligence victims, and also the NHS. AvMA is working with peers from all parties on possible amendments which would:

- keep legal aid for clinical negligence cases, so the most vulnerable and needy claimants will be able to access justice,
- prevent claimants needed and deserved damages payments being raided to pay for legal costs.
- ensure that the proposed one-way cost shifting (protecting claimants from the risk of having to pay the other side's costs) is genuinely available to all claimants.

Please use whatever links you have with politicians from any party to ask for these vital changes.

#### CUTTING LEGAL AID FROM CLINICAL NEGLIGENCE WOULD COST TAXPAYER MILLIONS EXTRA

The knock on costs to the NHS (i.e. the taxpayer) of taking clinical negligence out of scope for legal aid is estimated at THREE times predicted government saving, according to an independent report by Kings College. For full Press Release click [here](#)

#### CQC'S CYNTHIA BOWER RESIGNS

Cynthia Bower, Chief Executive of the Care Quality Commission (CQC) has announced she is retiring. The CQC is coming under fire from all directions at the moment. The Department of Health has just published an initial report of its programme. It has been racked by scandals such as Winterbourne View, and its (mis)treatment of whistleblowers. Most recently, the CQC's resistance to a statutory duty of candour being placed in their registration regulations was quoted and used by the Minister as the main excuse for opposing the statutory duty of candour amendment in the Lords. It is very ironic that our national regulator, which is supposed to promote and uphold good practice in healthcare, has allowed itself to become the main barrier to this much needed advance. AvMA Chief Executive, Peter Walsh, was also called to give evidence to the House of Commons Public Accounts Committee earlier this month. MP's on the committee castigated the CQC for a raft of failures. Amongst other things, the CQC

stands accused of gagging its own staff/board members. AvMA's view is that the CQC has shown a distinct lack of insight and leadership required from a national regulator, and a culture change is needed. Whilst Cynthia Bower was the CEO who has overseen recent failings, the Board and other senior staff have also been party to it.

### **WILL THE HEALTH BILL LIVE OR DIE?**

With so little in it that patients want, and faced with outright opposition from most health professional bodies, there must be a doubt as to whether the Health and Social Care Bill will survive, or should survive. The latest controversy concerning it has emerged in the form of a proposal to strip the proposed 'Healthwatch' patients' organisations of what statutory powers they were due to have. There had already been concerns about the lack of ring fenced funds for Healthwatch and threats to its independence due to reliance on the CQC and local authorities. AvMA will be supporting amendments to strengthen Healthwatch. AvMA is also lobbying for the introduction of statutory regulation of Healthcare Assistants - another issue likely to stimulate a close vote.

### **TOO MANY PREVENTABLE STILLBIRTHS**

The charity SANDS launched their report into stillbirths and how to reduce the number in Westminster on 18<sup>th</sup> January. See [here](#). AvMA were pleased to be there to support the launch. 17 babies a day are stillborn each day – many of them avoidably. In AvMA's experience it is too often passed over as unavoidable and parents have huge difficulties in getting answers and redress where appropriate.

### **AvMA IN THE NEWS:**

20.01.12 BBC TV News 'Look West' Breast Implants

26.01.12 BBC Online: Stafford / Never Events

29.01.12 Sunday Telegraph: DePuy hip replacements

30.01.12 Daily Express: hip replacements

31.01.12 BBC Radio Berkshire: DePuy hip replacements

31.01.12 Daily Mail: Pressure ulcers:

<http://www.dailymail.co.uk/health/article-2093904/Bed-sores-How-does-local-hospital-compare.html>

06.02.12 BBC Radio Berkshire: Legal Aid

07.02.12 Daily Telegraph letter re Duty of Candour amendment:

<http://www.telegraph.co.uk/comment/letters/9064538/Legislating-to-avoid-cover-ups-in-the-NHS.html>

07.02.12 Daily Telegraph: article re Duty of Candour amendment:

<http://www.telegraph.co.uk/health/healthnews/9064063/Force-NHS-trusts-to-admit-mistakes-to-patients-urge-groups.html>

07.02.12 Daily Mail : Clinical negligence costs / legal aid:

<http://www.dailymail.co.uk/news/article-2097448/15bn-lawyers-NHS-blunders-Avalanche-win-fee-claims-push-costs-13.html?ito=feeds-newsxml>

08.02.12 BBC Radio Stoke: Clin neg / legal aid

08.02.13 BBC Radio Kent: Clin neg / legal aid

12.02.12 Daily Telegraph: Freedom of Information requests& NHS:

<http://www.telegraph.co.uk/health/healthnews/9075181/NHS-managers-want-to-limit-Freedom-of-Information-requests.html>

24.02.12 Guardian: resignation of CEO of CQC:

<http://www.guardian.co.uk/society/2012/feb/23/nhs-watchdog-cynthia-bower-resigns?CMP=NECNETXT8187>

### **FORTHCOMING EVENTS:**

For information visit the [events](#) page of our website or e-mail [conferences@avma.org.uk](mailto:conferences@avma.org.uk)

## **WE NEED YOUR SUPPORT:**

AvMA relies on its charitable fundraising to continue to develop and provide support to people affected by medical accidents and to campaign for patient safety and justice. If you would like to make an online donation to AvMA easily and securely, simply click [here](#). If you would like to make a regular donation please complete and return the form from [here](#). We have also developed a whole range of opportunities to raise money for the charity and have fun at the same time. These range from holding a coffee morning to doing a sponsored parachute jump. Some other ideas include organising a charity golf day or quiz night in support of AvMA, or doing a sponsored run or other activities. Our events team will provide you with all the help and support you need. Contact them at [conferences@avma.org.uk](mailto:conferences@avma.org.uk) or visit "[Support Us](#)".