Conscientious Objection (Medical Activities) Bill

House of Lords, Committee Stage
Friday 23rd March 2018

About the BMA
The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The BMA supports doctors seeking to exercise a reasonable right to conscientious objection providing it does not lead to patient harm.

In light of this Bill’s potentially grave impact on a patient’s right to appropriate and timely care, by significantly extending the scope of conscientious objection without offering appropriate safeguards to patients, we cannot support it.

Key points:

- The BMA supports a doctor’s right to conscientiously object to participating in certain procedures that, although lawful, conflict with their beliefs and values, providing it does not lead to patient harm.

- There is already an existing legal right for doctors to opt out of participating in abortion and fertility treatment if they believe it conflicts with their beliefs. We support a doctor’s freedom to make these decisions, whilst ensuring that patients can still access appropriate and timely care.

- Although not recognised in statute, we also support a doctor’s request to opt out of withdrawing life-sustaining treatment from a patient who lacks capacity, if there is another appropriately qualified colleague who is willing to take over the patient’s care without delay.

- We believe this Bill would risk patient care by significantly extending the scope of conscientious objection – particularly in terms of the range of activities to which it would apply, as this could be harmful to patients – and therefore cannot support it.

Background – conscientious objection
Patients are entitled to receive timely, high quality care and treatment in a supportive and non-judgemental manner. The legal right to such care and treatment is enshrined in the NHS’s framework of rights for patients, public and staff (embodied in the NHS Constitution in England), and a doctor exercising a conscientious objection must take care not to undermine this right.

The BMA recognises that some doctors may conscientiously object to participating in certain procedures that, although lawful, conflict with their personal beliefs and values. Understandably, doctors may seek to specialise in areas where they will not ordinarily be called upon to perform treatments to which they hold an objection. However, it might not be possible to avoid all...
situations in which they could be faced with this challenge – especially for medical students, some doctors in training, and general practitioners.

As such, we support a doctor’s freedom to choose to opt out of participating in a particular procedure as long as it does not disadvantage, or discriminate against, the patient. This is already recognised in statute for doctors with regard to participating in abortions (Abortion Act 1967) or fertility treatment (Human Fertilisation and Embryology Act 1990).

Although not covered in statute, we would also support a doctor making a request to opt out of withdrawing life-sustaining treatment, in recognition of deeply held moral or religious beliefs on this subject, provided another doctor is willing to take over the patient’s care.

Conscientious Objection (Medical Activities) Bill
Scope of activities
The Bill seeks to “clarify the extent” to which a health professional can refrain from participating in certain medical procedures – namely abortion, fertility treatment, and withdrawal of life-sustaining treatment.

However, beyond simply clarifying the existing legal basis for conscientious objection, the Bill, in fact, significantly expands the scope of “activities” to which an objection could apply. Under the Bill, a wide range of health professionals (doctors, nurses, midwives, and other healthcare professionals) would be legally entitled to choose to opt out of supervising, delegating and planning certain procedures or treatment. It would also allow them to object to supporting staff who carry out any of these activities.

The BMA is seriously concerned by the scope of activities to which this right would apply, as it goes far beyond the direct participation in treatment (which is the normal and natural meaning of ‘participate’, as interpreted by the courts).¹ Our understanding of the Bill is that it could permit, for example, a scenario in which a hospital’s clinical director, or a health commissioner, could decide to exercise a right not to supervise, delegate, or carry out any planning for abortion services. The potential ramifications of this on patient care are extremely worrying, as such a scenario could have a serious adverse health consequence for women wishing to access these services. This is just one example of how the new powers in the Bill could risk patient access to safe and timely care.

Scope of treatments
Although we note that the Bill would uphold existing safeguards for patients in the Abortion Act and Human Fertilisation and Embryology Act (see clause 1(5)), such as setting aside a conscientious objection in life-threatening scenarios, no such provision is included for extending the statutory right to conscientiously object to withdrawing life-sustaining treatment (which is not currently covered in law) to ensure continuity of care for the patient.

A health professional could refuse to supervise, delegate, or plan the withdrawal of treatment, or to support staff who are involved in these activities, without an obligation to set aside their conscientious objection if exercising it would disadvantage the patient in any way.

Competent patients can refuse consent for life-sustaining treatment even where it would result in their death. To continue to treat a patient subsequent to a competent refusal, or to provide treatment that is not in the best interests of a patient who lacks capacity, would be unacceptable

¹ Janaway v Salford HA [1988] 3 All ER 1079
and could amount to assault. We would be concerned if this Bill were to introduce a statutory right for healthcare professionals that might be perceived to be in tension with the long-established rights of patients.

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To find out more about the BMA’s position and guidance on conscientious objection, please visit the BMA’s website.

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