

MEDICAL PROTECTION SOCIETY

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Rt Hon Matt Hancock MP
Via email
Secretary of State for Health and Social Care
Department of Health and Social Care
39 Victoria Street
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14 January 2021

Dear Secretary of State

Emergency legislation needed to protect healthcare professionals at risk of inappropriate legal challenge when treating COVID-19 patients

We are writing to you as a coalition of leading healthcare organisations to urge you to introduce emergency legislation that would protect healthcare professionals who could find themselves at risk of inappropriate legal challenge when treating COVID-19 patients in circumstances beyond their control.

On 2 November 2020, the Prime Minister rightly warned that if the NHS is overwhelmed we could face a 'medical and moral disaster' where doctors and nurses could 'be forced to choose which patients to treat, who would live and who would die'.

With the chief medical officers now determining that there is a material risk of the NHS being overwhelmed within weeks, our members are worried that not only do they face being put in this position but also that they could subsequently be vulnerable to a criminal investigation by the police.

In a survey of over 2,400 doctors conducted this week (8-12 January 2021), 61% said they are concerned about facing an investigation as a result of a clinical decision made while working in an extremely challenging, high-pressure environment. More than 1 in 3 (36%) specifically said they are concerned about the prospect of an investigation following a decision to withdraw or withhold life prolonging treatment due to capacity and resource constraints during the pandemicⁱ.

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As we are sure you are aware, decisions on whether to administer or withdraw treatment have long been made on the basis of what is in the best interest of the patient in front of them. In normal times, general guidance to be followed on a case by case basis is sufficient - whether from a healthcare professional's employing Trust or Board's Ethics Committee or from their Royal College, union, regulator or NICE.

However, while this guidance is valuable, it neither provides nor claims to provide legal protection. It also does not consider Covid-19 specific factors such as if and when there are surges in demand for resources that temporarily exceed supply. There is no national guidance, backed up by a clear statement of law, on when life sustaining treatment can be lawfully withheld or withdrawn from a patient in order for it to benefit a different patient, and if so under what conditions.

The first concern of a doctor is their patients and providing the highest standard of care at all times. We do not believe it is right that healthcare professionals should suffer from the moral injury and long-term psychological damage that could result from having to make decisions on how limited resources are allocated, while at the same time being left vulnerable to the risk of prosecution for unlawful killing.

Let us be clear, doctors and other healthcare professionals should not be above the law, and the emergency legislation we propose should only apply to decisions made in good faith, in circumstances beyond their control and in compliance with relevant guidance – it would not apply to wilful or intentional criminal harm, or reckless misconduct. Such an emergency law should also be a temporary response to the Covid-19 crisis, applying retrospectively from the start of the pandemic.

By introducing such legislation, the Government would be building on the positive early steps that were taken at the beginning of the pandemic to reassure healthcare professionals about the challenges they may face. The UK Government moved quickly to create clarity over indemnity arrangements for clinical negligence claims via the Coronavirus Act 2020. The GMC also acted to reassure doctors by publishing guidance for their staff on how they will take the context created by COVID-19 into account when considering complaints about doctors. While these measures are positive, they do not address the specific concern we are highlighting to you now.

We appreciate that this would be a significant step for the Government to make. But legislation to protect healthcare workers from the challenges of this pandemic is not without international precedent. In New York state, for example, The Emergency Disaster Treatment Protection Act 2020 granted temporary immunity from civil and criminal liability to New York healthcare professionals for the purpose of 'promoting the public health, safety and welfare of all citizens' during the state of emergency.

There is good reason to believe the public understands the need for such legislation. A YouGov survey of over 2,000 adults last year showed that 67% would support the introduction of emergency laws so that doctors are protected from criminal and regulatory investigation in relation to their treatment of patients during this pandemicⁱⁱ.

We do not underestimate how difficult this issue is. There will be a time in the future when we will need to debate the range of legal and ethical challenges that have been raised by this pandemic, and these are difficult discussions that will need a significant amount of time as well

as consideration of a wide range of different perspectives. In the meantime, this crisis is upon us now and healthcare professionals need immediate action.

The Government has demonstrated that it is able to act quickly to address other emerging risks. We hope that this letter is helpful in highlighting a further pressing issue that needs an urgent response. We look forward to your reply.

Yours sincerely



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President, Medical Protection Society



Dr Chaand Nagpaul CBE
Council Chair, British Medical Association



Professor Michael Griffin
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Dr Claudia Paoloni
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Dr Ramesh Mehta OBE
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Chairman of the Board, Medical Defence Shield



Dr Jenny Vaughan
Vice-Chair, The Doctors' Association

cc. Jeane Freeman MSP, Cabinet Secretary for Health and Sport, Scottish Government
cc. Vaughan Gething MS, Minister for Health and Social Services, Welsh Government
cc. Robin Swann MLA, Minister of Health, Northern Ireland Executive

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ⁱ MPS survey of 2,420 members conducted by MPS 8-12 January 2021.

ⁱⁱ Survey conducted by YouGov Plc. Total sample size was 2061 adults. Fieldwork was undertaken between 1 - 4 May 2020. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).