

## MPS Briefing

### Medical Innovation Bill: House of Commons, Second reading February 2015

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Since Lord Saatchi first introduced this Bill in the House of Lords, MPS has been concerned that it could damage the doctor/patient relationship, give false reassurance to some doctors, and hinder current responsible medical innovation. These remain our concerns, and we therefore continue to oppose to this Bill.

Despite concern being raised across the medical community, and many constructive efforts having been made to bring greater clarity to the proposed legislation, the Bill remains a risk to responsible innovation and patient safety.

#### Amendments at Report stage

Responsible innovation happens in medicine, and must be free to continue. As drafted, the Bill could hinder such innovation. That is why, while opposing the Bill, MPS has called for a number of areas of medical treatment to be excluded in order to bring greater clarity. The Bill should not apply to the delivery of a child, emergency care including surgery, and crucially not to primary care.

#### *Exclusions*

A considerable amount of the debate has focused on exclusions, and the Bill now rightly excludes any 'treatment which is carried out solely for cosmetic purposes.' However, exclusions should go further, and it is not clear why defining the scope of the Bill in terms of cosmetic surgery is justified, yet not to other areas of medical treatment.

Emergency care and immediately necessary surgery should be areas clearly excluded on the face of the Bill. In situations where a doctor is required to act quickly in the best interest of the patient, using their professional judgment, the Bill as it currently stands adds unnecessary confusion. The provisions of the Bill should not extend into a primary care setting, as it is by no means certain that its decision making structures would pass the test for a 'responsible body.'

#### Potential risks created by this Bill

- **Falsely reassuring some doctors.** We understand that the purpose of the Bill is to provide doctors with an assurance that before they innovate, if they follow the process outlined in the Bill, they will be supported and protected by the court. This is incorrect in law. For instance, the Bill fails to give an absolute definition of an 'appropriately qualified' doctor. Whether the doctor consulted is in fact 'appropriately qualified' is open to the scrutiny of the courts. It would always be possible to challenge through the courts whether the provisions of this proposed legislation were complied with. Yet the Bill attempts to give a doctor reassurance ahead of any court decision. This is simply not possible.
- **Damage the doctor-patient relationship.** If responsible innovation is being curtailed, there are probably a number of potential barriers, and funding is likely to be the most significant. This Bill fails to recognise this and other barriers to innovation, yet could create a perception amongst some patients that innovative treatments are readily available and that every doctor has an understanding of all possible treatment routes. Neither is the case. It would be for the doctor to explain otherwise, and thus risk damaging the doctor-patient relationship.

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- **Adding unnecessary bureaucracy to current good medical practice.** The Bill brings into question the significance of NICE guidelines. NICE guidelines have become the established method by which doctors gauge what procedures and/or drugs are standard. As there is no definition of innovation, this Bill could result in any procedure and/or use of drug that is not in NICE guidance having to go through this Bill's process, if that becomes the de facto definition of innovation. Currently, a slight departure from NICE guidance is done on the basis of a doctor's professional judgment, in line with the Bolam-Bolitho tests. Yet this Bill could require such decisions to be referred to colleagues as a matter of course, with more hurdles to treatment than there are at present.

Ensuring responsible innovation in medicine is important, and MPS supports a responsible and innovative medical profession. Current law allows doctors acting responsibly to innovate, and therefore this Bill is unnecessary. The time has come for the debate to shift towards improving education about the present law, rather than confusing the law through a new piece of legislation.

This Bill remains flawed and has the potential to create a number of adverse unintended consequences. It poses a risk to patient safety. It risks stifling the responsible innovation already seen in the medical profession. It adds confusion to established common law – common law which supports responsible innovation. We urge MP's to object to this Bill.