

Medical Ethics Committee Report to ARM 2024

Introduction

The BMA medical ethics committee (MEC) is made up of BMA members and external experts (including lawyers, ethicists, and philosophers) with observers from the national councils in Scotland, Wales and Northern Ireland ensuring that our work meets the needs of BMA members across the UK. The committee considers ethical and human rights issues important to the medical profession and helps to ensure that the UK legal and regulatory environment supports and strengthens ethical standards in medicine. Through this work, the BMA continues to advocate the highest standards of ethics and human rights in healthcare, both for clinicians and for patients, at home and abroad.

The committee is supported by a small, dedicated medical ethics and human rights team. In addition to supporting the MEC and contributing ethics insight to wider BMA policy, the team provides both individual and collective ethics advice and guidance to BMA members. In addition, the MEC and the ethics team provide an ethics resource for all BMA teams and committees across the UK. We are always happy to receive requests from other committees or teams within the BMA for a view on specific ethical issues and subsequent policy support.

This report summarises some of the key issues we have been working on this session.

Guidance for members

An important part of our work continues to be supporting our members who are confronted with challenging ethical or human rights issues. We do this both individually, through our ethics advice service, and collectively through our published guidance and seminars/talks on ethical issues. The BMA's ethics guidance, most of which is based on common enquiries received from BMA members, can be found [here](#).

Core ethics guidance

This year, the MEC has published its fully updated core ethics guidance. This is practical guidance for members, based on the key ethical issues that doctors face in their day-to-day working lives. It replaces the MEC's handbook of medical ethics, *Medical Ethics Today*, bringing together our toolkits on core ethical issues into a single online resource. The resource is fully searchable, easy to navigate and can be easily accessed on a mobile phone or tablet, ensuring it is accessible to our members whenever and wherever

they need it. It is also now much easier to update, so we can reflect new legal cases that impact on clinical practice and ensure that we reference the most up-to-date guidance from bodies like the GMC. This resource provides an essential core package of information for both medical students and practising doctors with a single, memorable URL (www.bma.org.uk/core-ethics).

The BMA's Core ethics guidance comprises the following sections:

- How to approach an ethical question
- Doctor-patient relationship
- Consent and refusal by adults with decision-making capacity
- Mental Capacity (separate guidance for England and Wales; Scotland and Northern Ireland)
- Children and young people
- Confidentiality

The resource also links to other BMA ethics and human rights guidance and resources.

New guidance

Confidentiality and crimes related to abortion

The BMA has become increasingly concerned about the number of cases of women who have received medical care and subsequently been investigated by the police for unlawfully attempting to terminate their pregnancy; in some of these cases it has been suggested that the police were contacted by members of the healthcare team. The ethics and human rights team were also aware of members who were uncertain about their own obligations to respect confidentiality when they know, or suspect, that a patient has unlawfully attempted to end their pregnancy. The BMA has therefore published [new guidance](#), supported by the GMC and National Data Guardian, to help doctors remain compliant with the rules on confidentiality in these situations or when handling requests for information from the police.

**** Coming soon *** Treating 16 and 17-year-olds*

When they reach the age of 16, all young people in the UK are assumed, in law, to have the capacity to make their own decisions about medical treatment and in Scotland young people are classed as adults from that age. It is not until they reach the age of 18, however, that they are treated in the same way as adults in every area of medical law, and this can make decision making for this group complex. As a result, in the past some of the answers doctors need were found in our guidance on children and young people, some in our adults' consent and refusal guidance and some in our guidance on adults who lack capacity to consent. To make our guidance as helpful and as accessible as possible this separate guidance on treating 16 and 17-year-olds, will bring together in one place the key information doctors need to know when treating this group of patients.

External influence and policy development

Physician-assisted dying

From the BMA's position of neutrality on whether or not the law should change, the MEC has carried out a significant piece of work on how we can best protect and represent our members when commenting on legislative proposals. Following significant research and discussion, the MEC identified a number of practical issues that would significantly impact on doctors if the law were to change and came up with a list of points we would want addressed in any future legislation; this work has now been approved by all four BMA Councils.

If assisted dying were legalised, we would want to see:

- an opt-in model for doctors to provide assisted dying

- a right to refuse to carry out activities directly related to assisted dying for any reason (not just conscience)
- statutory right to protection from discrimination and detriment
- provision for safe access zones to protect staff and patients from harassment and abuse
- assisted dying to be arranged (but not necessarily delivered) through a separate service
- neither a requirement to discuss assisted dying with patients, nor a prohibition on initiating discussions
- open and transparent regulation and oversight
- data collection and publication
- a detailed review of all assisted deaths

We have been engaging with legislators on behalf of our members in Jersey and the Isle of Man with some significant successes. For example, the ministerial Committee considering the Isle of Man's Assisted Dying Bill has recommended shifting to an opt-in system; and in Jersey (which is already based on an opt-in model), following our intervention the right to a conscious objection has been extended to a general right to refuse to carry out certain activities for any reason. We have also been working closely with BMA Scotland who have been in contact with Liam McArthur MSP about his recently published Assisted Dying for Terminally Ill Adults (Scotland) Bill.

For more information on our engagement work on assisted dying, and the progress we are making in protecting our members, please visit www.bma.org.uk/pad.

Abortion

The BMA continues to promote ARM policy on various aspects of abortion. The BMA has, for example, campaigned for many years for national legislation to introduce safe access/buffer zones outside abortion services to protect staff, patients and those accompanying them from harassment and intimidating behaviour. Legislation to protect areas outside services has now been passed in England, Wales and Northern Ireland and discussions are continuing in Scotland.

We have also continued to brief parliamentarians on our support for the decriminalisation of abortion for both women and medical professionals as per ARM policy. We indicated support for Dame Diana Johnson MP's amendment to the Criminal Justice Bill, which would decriminalise abortion for women. We have also worked with the RCOG and other bodies to oppose two amendments that would, respectively, reduce the abortion time limit from 24 weeks to 22 weeks and limit abortions for fetuses diagnosed with down syndrome. The Criminal Justice Bill was not passed prior to the General Election announcement and we will continue to monitor developments in this legislative area during the new parliament.

Confidentiality

The ethics and human rights team, alongside the Office of the National Data Guardian and NHS England, worked with the National Police Chiefs' Council (NPCC) to produce a standardised national form and guidance for use when the police (in England) request information.

This work was the result of member contact with the BMA which made the ethics and human rights team aware that the NPCC had produced a form for when the police request information from organisations, including healthcare organisations. We were concerned that the form omitted references to compliance with the common law duty of confidentiality and GMC standards, therefore putting doctors at risk of breaching both the law and professional guidance when handling requests for information from the police. The ethics team contacted the NPCC and worked with them to address these concerns. The amended form and guidance now in use reflect the standards of confidentiality and information sharing in the health sector. Use

of the standardised form which requires the police to set out what informed they require and why will help doctors who are making decisions about disclosures of health information.

Legal cases

The MEC monitors cases going through the Courts in the UK to identify any issues that would significantly impact on clinical practice and, where appropriate, may advise that the BMA should seek to intervene to protect the interests of our members. In the last year, there have been two cases in which the BMA has intervened in this way.

Jennifer McCulloch and Others v Forth Valley Health Board

This is a Scottish clinical negligence case where leave to appeal to the Supreme Court was granted on the question of what information a doctor must provide to a patient as part of the consent process. The pursuers' case expanded on the Supreme Court Judgment of *Montgomery v Lanarkshire Health Board* and, if successful, would have imposed a potentially far-reaching obligation on doctors to explain alternative treatments/procedures and the risks/benefits of alternatives, even where the doctor had decided that those were not reasonable options to offer the patient. The MEC concluded that the potential implications of an adverse judgment were sufficiently serious to merit a legal intervention by the BMA. The appeal was successful, and the judgment, which refers to the BMA's submissions, can be accessed [here](#).

Abassi & Anor v Newcastle upon Tyne Hospitals NHS Foundation Trust

The BMA [intervened](#) in a Supreme Court case which concerned Reporting Restriction Orders which protect the identity of clinical staff involved in court proceedings. The BMA believes that it is imperative that clinicians, who will not have chosen to become involved in court proceedings, do not, in consequence of those proceedings, face vilification, threats, and other adverse treatment simply for doing their job. Although the case relates to paediatric intensive care and end-of-life decision-making, similar considerations can and do arise in a range of other clinical settings where medical treatment is being provided, and the outcome of this appeal is therefore likely to have significant consequences for all doctors. The Hearing took place on 15 and 16 April and we are awaiting the outcome.

Human rights

During a year in which armed conflict, political instability and the assertion of untrammelled state power have continued to disfigure the world, the Medical Ethics Committee, and the ethics and human rights team, have remained vigilant about abuses of health-related human rights. Our work this year has had two main foci: continuing to respond to UN reports on medical involvement in serious abuses of health-related human rights in China; and the violation of medical neutrality in armed conflicts.

One major achievement this year has been the passing of a WMA motion calling for the Chinese Medical Association to acknowledge and condemn the severe human rights abuses committed by the Chinese government, with the complicity of medical professionals, against the Uyghurs in Xinjiang province. If the Chinese Medical Association has not done so by the WMA General Assembly meeting in October 2024, the BMA will explore further options.

On 1 February 2024, BMA House was lit up once again to acknowledge 3 years since the coup in Myanmar. The Tatmadaw, the Myanmar military, continue to target medical professionals in the country and utilize harsh repressive measures.

We have written to the UK Ambassador to the Republic of Korea (RoK), also known as South Korea, to express our concern regarding the arrest and suppression of colleagues in the RoK's Medical Association. We have also continued to raise concerns regarding the oppression of the Turkish Medical Association by their government.

Like most of the world, the BMA has been deeply alarmed by events in Israel and Gaza since 7 October 2023. We have unequivocally condemned the Hamas attack on 7 October 2023 and called for the release of the hostages taken. The BMA has also called for a ceasefire, sufficient supplies for those facing a humanitarian crisis in Gaza, and respect for international humanitarian law including the principle of medical neutrality. We took an emergency resolution to the WMA Council meeting in April calling for a ceasefire which passed unanimously. Our approach has been informed by our procedures for engagement on international humanitarian issues, which can be found [here](#). A summary of our actions on the conflict can be found [here](#).

A summary of the BMA's recent work in human rights matters can be found [here](#).

Other issues considered by the Medical Ethics Committee in the 2023/24 session

The committee discussed a diverse range of topics across the spectrum of medical ethics and human rights. In addition to the issues referred to above, the MEC also discussed papers on the following topics:

- Artificial intelligence
- The GMC's updated Good Medical Practice
- Unaccompanied Asylum Seeking Children (UASC)
- 'Martha's Rule'
- Direct-to-consumer health screening kits
- Healthcare in conflict zones
- Modernising the Human Fertilisation and Embryology (HFE) Act
- Doctors seeking information about patients online
- Risk feeding
- Complicity and referral in extremely inhumane detention settings
- Review of guidance on non-therapeutic male circumcision
- The diagnosis and confirmation of death
- Healthcare for asylum seekers

Information about the Medical Ethics Committee can be found [here](#). The ethics team is happy to speak to any members who are interested in finding out more about the BMA's work on medical ethics and human rights (ethics@bma.org.uk).

Dr Jan Wise

Chair, Medical Ethics Committee

June 2024