

CORONAVIRUS

Doctors want new legal protections if they have to choose between patients

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Doctors fear they could be prosecuted over decisions made if hospitals became overwhelmed

Doctors require immediate emergency legal protection in case NHS pressures caused by coronavirus force them to choose between patients, leading healthcare groups have warned.

In a letter to the health secretary, the groups say that there is no legal protection for doctors faced with “surges in demand for resources that temporarily exceed supply”.

Doctors fear that they could face prosecution for unlawful killing because of decisions they are forced to make in such a situation, they add.

In November [Boris Johnson](#) gave warning that should the NHS be overwhelmed “the sick would be turned away because there was no room in our hospitals”, with doctors and nurses potentially “forced to choose which patients to treat, who would live and who would die”.

This month the chief medical officers said that [the NHS](#) was at high risk of [being overwhelmed within weeks](#).

The Medical Protection Society co-ordinated the letter, which has been signed by the Doctors’ Association UK, British Association of Physicians of Indian Origin, British Medical

Association, Hospital Consultants and Specialists Association, Royal College of Surgeons of Edinburgh and Medical Defence Shield.

They say that although doctors had a range of guidance to follow when administering and withdrawing treatment “this guidance neither provides nor claims to provide legal protection”.

They add: “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 how clinicians should proceed in such a difficult situation.

“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 they or other 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 feel vulnerable to the risk of prosecution for unlawful killing.”

A survey this week of 2,400 doctors found that 61 per cent were concerned about facing an investigation as a result of a clinical decision made under pressure, with 36 per cent concerned about being investigated should they decide “to withdraw or withhold life-prolonging treatment due to capacity and resource constraints”.

The letter says healthcare professionals “should not be above the law” but they should be protected over “decisions made in good faith, in circumstances beyond their control and in compliance with relevant guidance”.

Any emergency law should apply retrospectively from the start of the pandemic, they add.

Dan Poulter, an MP and NHS doctor who served as a health minister under David Cameron, said: “With the current wave of the Covid-19 pandemic stretching our NHS to the limit, there are increasing numbers of patients requiring life-sustaining care and we could very soon be in a position where doctors may be forced to choose which patients to treat with the limited resources available to them. It is important that we see greater clarity provided by government to ensure that there is full protection in place to protect frontline staff.”

Michael Mylonas, QC, of Serjeants’ Inn Chambers, added: “In emergency departments throughout the country, doctors will have to take decisions as to who should receive ICU services. In the absence of national guidance, doctors in different hospitals — perhaps even neighbouring hospitals — may well apply different criteria and reach different decisions.

“This places an enormous additional burden on healthcare workers, provides no certainty about the treatment that will be available on attending hospital and invites legal challenge. The government must provide decisive leadership on this issue.”