

Medical neglect law needs shot in the arm

April 23 2013

A review of criminal investigations into medical error, conducted by a University of Manchester team, has shown how difficult it is to convict doctors and nurses for wilfully failing their patients.

Professor Margot Brazier, who led the team, says the "appalling" failures at Mid Staffordshire NHS Trust will not result in [prosecutions](#) unless the [law](#) is changed.

Of the 75 Crown Prosecution Service files they studied, just 5% result in prosecutions.

She will highlight the team's findings and ask if 'bad' doctoring should be a crime in a public lecture at the University called 'My Doctor's a Criminal' this week (23 April).

A prosecution, they say, can only currently succeed if the behaviour of medical or nursing staff can be shown, beyond reasonable doubt, to have made a substantial contribution to a patient's death.

But the team found that the prosecution often cannot prove this because of [patients'](#) previous [poor health](#) – a factor in Mid Staffs.

In other cases, according to the team, the law has been unfairly used to prosecute those who have made genuine though tragic mistakes.

The researchers, based in the University's School of Law, say prosecutors should use existing—but also new—offences to bring bad

doctors to book.

This, they say, should happen when there has been a wilful disregard for the welfare of patients, regardless of whether or not the neglect results in death.

They argue the 'wilful neglect' of vulnerable patients should be grounds for criminal charges for all patients, not just those who are mentally disordered or lack mental capacity.

Professor Brazier said: "Inadequately supervised [junior doctors](#) and nurses have ended up in the dock charged with gross negligence manslaughter, even though there was no evidence of deliberate disregard for the welfare of the unfortunate patient.

"This is inherently unfair, when you realise that many of those responsible at Mid Staffordshire, responsible for leaving patients screaming in pain for hours and contributing to between 400 and 1200 deaths, will not be prosecuted."

Researcher Neil Allen, also from The University of Manchester said: "The sad reality is that English criminal law better protects animals against cruelty than it does hospital patients because it is not generally a crime for health care professionals to ill-treat or wilfully neglect them.

"We suggest that the deliberate or reckless infliction of unnecessary suffering by someone required by law to care for another's health should be a criminal matter, irrespective of whether that person is a child or mentally disordered or incapacitated.

"We are all vulnerable when sick and should all be protected from wilful neglect and ill treatment. Respect for human dignity surely demands nothing less."

Provided by University of Manchester

Citation: Medical neglect law needs shot in the arm (2013, April 23) retrieved 26 April 2024 from <https://medicalxpress.com/news/2013-04-medical-neglect-law-shot-arm.html>

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