

U.K. Proposes to Jail Doctors for “Willful Negligence” – Outcry Ensues (But It’s Already the Law in California)

According to various media sources including Time Magazine, after a scandal showing terrible care at a U.K. hospital, the British government is proposing a law that would provide criminal liability and jail sentences for doctors who are "willfully negligent." Not surprisingly, doctors aren't thrilled about the proposal.

In California, Penal Code Section 368 already provides:

Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

Anyone admitted to an acute care hospital or to a nursing home is considered "dependent" under this statute. If a doctor (or other responsible health worker) allows that person to "be placed in a situation" where the patient's health is "endangered" that provider is criminally liable and can be charged with a misdemeanor or felony.

In practice, this statute can be quite dangerous because every failure of care, no matter how minor, could create "danger" to a hospitalized patient. In one case I worked on, the California Attorney General's Office claimed that a nurse's hour-late turning of a bed-bound patient placed the patient "in danger" of developing bed sores. Eventually we beat the case but the vague nature of this allegation makes it a huge threat in the hands of an aggressive prosecutor.