

# The Review

## Denunciation:

a new threat to access to health care for undocumented migrants

In February last year I went to a European meeting on the care of destitute migrants.<sup>1</sup> There are estimated to be 2.6 to 6.4 million across the European Union (0.5% to 1% of the population of the EU)<sup>2</sup> and half a million such undocumented migrants in the UK.<sup>3</sup> The hospitality industry in the south east of England depends heavily on them, so that one person's illegal immigrant is another person's helpful waiter.<sup>4</sup> The situation of these migrants in the UK has recently been described in good qualitative research.<sup>5</sup> As the conference was running, thousands of migrants were landing on the Italian island of Lampedusa to avoid the Libyan crisis. I will first review what is already established about access to health care for undocumented migrants, then describe a new threat highlighted at this conference; denunciation.

The current situation regarding the health care of legal migrants in the EU has been well described by two officials from the International Organisation for Migration (IOM):

*'European countries face a threefold situation of: (i) constant migrant flows, (ii) health services and practices that are largely inaccessible or unused by migrant populations and often ill-suited to migrants' needs and (iii) higher vulnerability of migrants and their children to ill health due to negative socioeconomic circumstances. On the other hand, protection of migrants' health and their access to quality health care are recognised as: (i) a human right and a basic entitlement according to EU values; (ii) vital to migrants' integration and critical to reduce poverty and (iii) essential for social cohesion, good public health and the wellbeing of all.'*<sup>6</sup>

Where the migrant is legal the EU is committed to improving access to health care. In contrast, where the migrant is undocumented or illegal the health practitioner is placed in a dilemma; on the one hand, if they wish to provide care, they may be breaking legal or financial regulations, on the other hand, if they do not provide care, they may be violating human rights laws and acting against their own conscience.<sup>7</sup>

There were many themes to the conference and one was certainly the great variety of responses to the situation from

different European states. It was sobering to learn that in the UK undocumented migrants have less rights for access to health care than in the Netherlands, France, Spain, or Portugal.<sup>7</sup> Yet for undocumented child migrants this right is enshrined in the legally binding United Nations Convention on the Rights of the Child (1989), an international treaty signed by all members of the United Nations, including the UK, excepting only Somalia and the US.<sup>8</sup> Yearly reports have found the UK in breach of the Convention.<sup>9,10</sup> Some states, France and Italy for example, provide specialised and anonymous access to health care for undocumented migrants.<sup>7,11</sup>

Availability of health care in different EU states depends on the legislative context. States with an insurance-based health system can differentiate between legal access and funding, often providing one and not the other, whereas these two are conflated in tax-based systems. Beyond the legislative context is the everyday practice. Some countries may provide better access in reality in spite of a restrictive legislative context. This is often because of the activity of NGOs working on behalf of migrant communities. Such NGOs have sprung up in many countries; two active in the UK today are 'Médecins du Monde' and 'Médecins sans Frontières.' In the UK some migrants may access health care either on an emergency basis, which is legal, or via registration with a GP (which is only legal in the case of asylum seekers and failed asylum seekers<sup>12</sup>). In the UK the criterion for access to health care is residence. Before 2004 this could be taken to include undocumented migrants, but in that year the House of Lords refined the concept of residence to mean lawful residence, specifically excluding undocumented migrants.

There are some trends across European states of which UK doctors should be aware. The most widespread is the denial of health care as an instrument of immigration policy. This is occurring in every state. To some extent it is coordinated at a European level

because there is a central European policy on immigration; sometimes called 'Fortress Europe' by its denigrators. In contrast, healthcare provision is largely devolved to the member states. This use of the denial of health care as an instrument of immigration policy is, in my view, both manifestly unjust and ineffective. Do the policy makers really think that potential economic migrants research current health provision in the member state before migrating? This policy also has negative public health consequences as ill people are delayed in accessing health care and may therefore pose a risk to public health.<sup>11</sup>

The new trend highlighted at the conference was denunciation. Denunciation is where a state makes it a duty, or a condition of employment, for certain citizens to report undocumented migrants to the authorities. In the UK this has been a creeping trend over the past decades, so that now government employees in housing departments, benefit offices, and schools have such a duty.<sup>13</sup> In hospitals this does not fall to hospital doctors, but special people called 'overseas payment officers'. These employees simply have a duty to assess whether a patient can be charged, not, so far as I know, to denounce to the immigration authorities. Some, however, may do so. There was a pilot at the West Middlesex Hospital near Heathrow in 2008 where a direct line was installed between the hospital and the immigration service for the purpose of establishing immigration status. At Milton Keynes hospital, ward clerks are given a clear duty to report any suspicions that a patient is not a UK resident to the overseas payment officer. This officer's primary role is clearly to recover money. Appendix 8 of the hospital overseas payments policy, however, is a form that the overseas payment officer may use to fax a query to the immigration authorities in order to verify a patient's status. This form, while not being mandatory, will clearly, if used, act as a form of denunciation to the immigration authorities.<sup>14</sup> Whatever the precise situation,

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fear of being denounced and then deported is a frequently cited barrier for access to health care.<sup>15</sup>

Perhaps because GPs in the UK are self-employed it has not been suggested that they denounce patients to the authorities. However in Italy a law making it a duty for all doctors to denounce undocumented migrants seeking treatment was passed in the Chamber of Deputies by the Berlusconi government in 2009.<sup>15</sup> Because the various Italian doctors unions cooperated for once and threatened to go on strike this law was defeated in the Senate. In Germany, entitlement to care for undocumented migrants is effectively barred by the obligation to denounce imposed by German legislation on public institutions including the social welfare centres that have competencies on public health issues.<sup>11</sup>

A further threat, not as yet enshrined in any European law, as far as I am aware, is criminalisation. Criminalisation is where helping undocumented migrants in a specified way — such as providing health care — is made a criminal offence. (Providing employment has already been criminalised in the UK, [Immigration and Nationality Act 2006]). However, many years ago in Pinochet's Chile it was illegal to treat opponents of the regime. A British doctor, Sheila Cassidy was imprisoned and tortured for this offence and has written a moving account of this.<sup>16</sup> Similar action is being taken today in Bahrain against doctors who helped protestors in the 'Arab Spring' pro-democracy demonstration.<sup>17</sup>

Denunciation as a basis of public policy is very corrosive of trust. It was depicted in a storyline in *Coronation Street* in 2007, and perhaps more memorably, by Arthur Miller in *A View From the Bridge*.<sup>18</sup> The sad truth is that most of us can denounce somebody in a moment of spite and regret the action once it is too late.

I hope this piece may serve as a warning to UK doctors to look at the situation beyond our own borders and resolve not to be led down the two dangerous paths of denunciation and criminalisation, but to support policies that enable access to health care by all migrants. Migration is an increasing phenomenon in our modern world and migrants can bring great benefits to the host society if they are properly integrated.

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## The European Doctors Orchestra and Michael Lasserson

I hope Mike Lasserson was watching over us at the Sage, Gatehead, last November. There we were — a 90-strong amateur orchestra furiously rehearsing Shostakovich's 5th Symphony — brought to a resounding silence just seconds later not by the baton of a powerful conductor, but by being asked to remember Mike. It was a profoundly moving moment for those of us who had known him.

The European Doctors Orchestra was created in 2004 by Mike, a London-based GP, and a few other medical musicians, growing rapidly in stature from a sketchy idea to an established symphony orchestra, with players from all over Europe. We have travelled as far as Bucharest and Budapest, meeting twice yearly in different countries for intense and long weekends of music making. The only requirement for players is to work hard and play hard. On Friday mornings we are reticent and retiring; by Sunday afternoon we are performing with creative confidence.

Mike was diagnosed in early 2011 with metastatic mucosal melanoma. We played without him in Oslo in May while he underwent palliative treatment, and he died in July. While grateful patients will remember his quiet care, a whole orchestra ensures his musical legacy lives on ([www.europeandocctorsorchestra.com](http://www.europeandocctorsorchestra.com)).

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