THE PROVISION OF MEDICAL AND DENTAL SERVICES IN RELATION TO MEDICAL ETHICS*

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The Medical Association is disturbed by the ruling given by the South African Medical and Dental Council in March 1949 that the Council has no jurisdiction over bodies corporate which provide medical and/or dental services to the public. While accepting the validity of this ruling the Association is of the opinion that the legality of the position whereby corporate bodies are rendering medical services to the public and charging fees for such services is itself open to question. In a recent judgment in the District Court of the State of Iowa in and for Polk County it was held: 'That under the Iowa law the privilege of practising medicine is a personal one requiring qualifications which cannot be met by a corporation.' We believe that the position is the same under South African law.

Notwithstanding this judgment, the Association recognizes that in certain exceptional circumstances it should be permissible for particular corporate bodies to charge fees for services rendered by the registered practitioners employed by such bodies. For this reason it is necessary that such bodies be afforded the necessary legal status; that their scope and function in relation to the practice of medicine for gain should be strictly defined; that their activities in this regard should be so limited as not to conflict with the legitimate interests, rights and privileges of registered practitioners engaged in private practice; and that the same ethical discipline as applies to private medical practitioners should apply equally to practitioners in the employ of such corporate bodies and to the corporate bodies themselves through their chief medical or dental officers. Only such bodies as are non-profit-making in truth and in fact and whose objects are approved by the medical and dental professions should be entitled to recognition.

Since the jurisdiction of the Council at present extends only to persons registered under the provision of the Medical, Dental

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and Pharmacy Act, it will be necessary to extend the scope of the Act in a manner similar to that provided for Bodies Corporate carrying on business as Chemists and Druggists (sec. 76). This will enable the Council to frame appropriate ethical rules which they are precluded from doing at present. In our view, licences to practise medicine and dentistry by corporate bodies should be granted only with extreme care and circumspection and the conditions under which they may engage in private medical or dental practice should be strictly defined and controlled by the Council itself and should be subject to periodic review. A precedent for such definition and control already exists in the case of missionary and other doctors who are not entitled to full registration under the Act.

The *Friendly Societies Bill* is designed primarily to safeguard the contributions of persons banded together for the provision of a variety of benefits on the basis of mutual insurance. If the statutory recognition of such bodies were to confer unfettered legal rights in the practice of medicine and dentistry this would constitute the gravest possible threat to the rights and privileges of registered doctors and dentists. Already the point has been reached where a corporate body such as the Vanderbylpark Sick Benefit Fund reserves to itself the right (in defiance of medical professional opinion as represented by the Medical Association of South Africa, and, we submit, in contravention of South African law) to extend the facilities which it offers to all such persons and groups as the Fund may in its sole discretion decide, and to provide medical services to them on the basis of a closed panel of full-time medical officers appointed by the Fund. To quote another example, the Northern Medical Aid Society was originally formed to cater for the employees of 3 companies. They have extended their activities to embrace 50 companies. One of the conditions for participation is that each new company joining the scheme shall contribute a *pro rata* amount of the accumulated funds of the Society calculated on the basis of the accumulated funds and the number of members in existence at the date of the last balance sheet. The Society lays down no income limit for members joining the Society. In the year ended 30 June 1955 new participating companies paid £2,972 for the privilege of membership for their employees and directors. In effect, this was the premium paid by the new participating companies to acquire the facility of purchasing medical services at rates considerably below those applicable in private practice—a privilege originally granted by the Medical Association to the 3 parent companies. The Mines Benefit Society has a similar provision for the incorporation of new companies. We regard this arrangement as a clear case of exploitation of the medical profession.

The intervention of a third party in the relationships between medical practitioners and individual members of the public entails risks which require to be carefully guarded against. By analogy, it can be readily appreciated that the entire process of law could be subverted if corporations and companies were to be granted the right to nominate and remunerate the lawyers who could be chosen to defend, in the Courts of Law, the individual interest of all persons who fall under the control of such companies—whether by compulsion or by voluntary submission. The threat to professional standards and relationships is perhaps less obvious but no less cogent in the case of doctors employed by corporate bodies. The personal responsibility and intimate relationship between patient and doctor is the keystone which supports the entire legal and moral structure of medical practice and it is apparent to us that attempts to dislodge it are being made on all sides. We have the gravest misgivings that the statutory recognition of medical benefit and medical aid societies and similar organisations under the Friendly Societies Bill may confer legal sanction upon such bodies to engage in medical and dental practice in competition with private practitioners.

A similar principle is involved in the statutory registration of auxiliary personnel under the *Supplementary Health Services Bill*. It appears to us that this proposed legislation may confer rights and privileges on individuals which have hitherto been the prerogatives of registered medical practitioners. The South African Medical and Dental Council appears to be already committed to supporting the Bill in principle. We would urge that the full implications of the Bill so far as the medical and dental professions are concerned should be carefully examined in consultation with the Medical and Dental Associations of South Africa before it is translated into law.

In our view the Council's present definition of 'farming out' is inadequate. As an example we would instance the arrangement in the Transvaal (of which the Council is aware) whereby fees are charged to private patients for radiological and other services performed by the full-time staffs of public hospitals. In an effort to regularize the ethical implications of this arrangement, the Transvaal Provincial Administration agreed with the Medical Association of South Africa to establish a separate fund for radiological fees accumulated in this way; the disposal of the funds to be determined in consultation with the Medical Association. Several thousands of pounds have accrued to this fund as a consequence of this arrangement but it has now been found that there is no legal machinery for the disposal of the monies in the manner comtemplated. In consequence, these monies have been and are being appropriated by the Provincial Administration. If, as we believe, the legal decision in the Court of Iowa is equally applicable in South Africa, the fees charged to private patients by the hospitals for these services may not have been levied legally in the first instance.

The Association is also concerned over the rights apparently extended to full-time medical personnel employed by bodies corporate such as the S.A.I.M.R. and the University of the Witwatersrand with regard to the publication of the names of members of staff in articles and news items in the lay press and in radio broadcasts. On occasions such articles and news items have been accompanied by photographs. The Association recognizes the desirability of publicizing research activities, especially those that are subvented in large measure by public funds and donations. However, the fact that the Institute and the University through their full-time staffs are jointly engaged in the practice of pathology under contract with the Transvaal Provincial Administration while the Institute itself is actively engaged in normal private practice raises the question of the ethical relationship of these bodies *vis-a-vis* registered medical practitioners engaged in private practice. Moreover, there is clearly nothing to prevent full-time clinical personnel receiving publicity in their full-time professional capacities and subsequently engaging in private practice.

The Medical Association has pointed out previously that the acceptance by pathological laboratories of appointments for pathologists to Sick Funds and public institutions—particularly without advertisement—is unfair to private practitioners. Since these advertisements—when they appear in the medical press—always call for the names and qualifications of the registered persons applying for the posts, we are at a loss to understand how a corporate body is in a position to apply for or to accept such appointments.

The payment of collection fees is another matter requiring consideration. It is understood that the S.A.I.M.R. has an arrangement with the United Medical Services whereby the latter body (which is a private, profit-making company) is billed in full for all fees for pathological investigations performed by the S.A.I.M.R. for patients housed in the nursing homes owned by the Company. The Company deducts 20% on payment of the Institute's account. In 1947, a member of the Association requested a ruling from the Council as to what his ethical position would be if he entered into an arrangement whereby a nursing home would collect his fees less a percentage for collection and he was informed that in the opinion of the Executive Committee of the Council 'it would not be correct for the nursing home to collect the fees and to deduct a percentage for such collection'. Similarly, when the Northern Transvaal Branch of the Association requested a ruling as to whether it would be ethical for doctors to accept full financial responsibility for pathological investigations carried out by the Institute of Pathology in Pretoria and to pay the Institute the full fees less 15% to cover bad debts and collection costs, the Branch was informed that such an arrangement would be contrary to the Council's ethical rules. The Association accepts these rulings as being correct and proper but wishes to point to the anomaly whereby corporate bodies are exempted from its rulings because they fall outside the jurisdiction of the Council. The payment of collection fees to an independent debt collector is clearly unobjectionable in certain circumstances but in the case of the arrangement between the S.A.I.M.R. and the United Medical Services, the arrangement is such that according to the Council's own ruling it would not be correct if entered into by a registered medical practitioner. According to Dr. Cluver's letter to the Council of 27 July 1955:

'This arrangement between United Medical Services and

> the Institute has twice been reported to the South African Medical and Dental Council by the Director of the Institute. It is arranged in this particular way because the onus of collecting fees for pathological services in their nursing homes then falls upon United Medical Services; the Institute therefore suffers no bad debts and incurs no expenses in collecting fees. There is no contract involved in the arrangement, the Institute enjoys no monopoly on pathological services in these Nursing Homes, and no doubt private pathologists could come to the same arrangement with the United Medical Services if they so desired. In effect United Medical Services for a fee acts as a debt collecting agency, and to the best of our knowledge it is not considered unethical for a doctor, a group of doctors, or a medical organization to employ a debt collection agency.'

Such an arrangement goes much further than either of the two on which the Council has already expressed an adverse opinion. Since the patient is billed together with the nursing-home charges weekly, or at the latest before discharge from the nursing home, prompt payment of the pathological fees by the patient to the Company is assured in the vast majority of cases. The very substantial percentage of the gross account deducted as a 'collection charge' provides a very strong incentive on the part of the Company to steer the pathological work for patients in their nursing homes in the direction of the Institute.

According to our information a Company owning certain nursing homes has an arrangement with a certain Sick Fund to make payment direct to the Company for radiological services rendered to the patients of the Fund by the radiologist or radiologists whose equipment is installed in these nursing homes. The fees are alleged to be on a basis not contemplated or approved by the Medical Association. This matter is under investigation by the Association at present. We mention it at this stage to demonstrate how the intervention of third parties over which the Council has no control may vitiate proper professional relationships and how undesirable precedents, if left unchecked, tend to undermine the high ethical code enjoined on registered practitioners by the Council.