

Medical Jurisprudence and Toxicology

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**MEDICAL JURISPRUDENCE
AND TOXICOLOGY**

PREFACE TO THE TENTH EDITION

THIS edition has been fully revised, new matter has been added, parts of the text condensed, others excised, and the whole brought up to date. Despite the addition of new material, the book has been reduced by some thirty pages.

The additions include references to : the Matrimonial Causes Act, 1950, the Corneal Grafting Act, 1952, the Prevention of Crimes Act, 1953, the Coroners' Rules (1953) (No. 205), the Medical Act, 1956, the Dentists Act, 1956, the Sexual Offences Act, 1956, the Road Traffic Act, 1956, the Homicide Act, 1957 ; recent changes in the law, together with relevant cases, connected with the liability of hospitals and nursing homes ; surgical sterilisation, the acid-phosphatase test for seminal fluid, the anti-human globulin test for human blood, recent trends relating to the treatment of barbiturate poisoning, and the antihistamine compounds.

The drugs in the First and Fourth Schedules of the Pharmacy and Poisons Act, 1933, together with those listed under the Dangerous Drugs Act, 1951, have been fully revised. This revision has proved a difficult task, in view of the frequency of the additions to, and deletions from, the various lists.

The toxicological section has been retained following representation from numerous doctors practising abroad. They have stressed the advantage of the subjects of both Medical Jurisprudence and Toxicology being embodied in a single volume. Although we are aware of the introduction of some improved analytical methods, these have not been described since, in most cases, they necessitate the use of intricate apparatus available only in the larger analytical laboratories.

In the present edition, I have been fortunate in having the far-reaching assistance and full co-operation of Dr Edgar Rentoul who, for more than a decade, has filled an important place on the staff of this Department. During this period, apart from departmental teaching and other duties, as a Medico-Legal Examiner in Crown Cases he has had a wide experience in the practical aspects of Forensic Medicine.

We would like to acknowledge appreciation for the helpful assistance given by Dr J. A. Imrie, Principal Medical Officer, City of Glasgow Police, and Lecturer in this Department, for the revision of his contribution on Ethyl Alcohol, and for the photographs already acknowledged in the text in addition to a number of others.

We are grateful to Dr A. G. Mearns for the revision of his contribution on Food Poisoning, Stings and Bites, and the Identification of Maggots, together with the drawing shown in Figure 43.

It is a pleasure to thank the Chief Constable, City of Glasgow Police, for his continued co-operation, and members of his staff, especially Chief Inspector George Maclean, Identification Bureau, Police Headquarters, for his valuable assistance in several directions.

We also refer to the assistance given by Mr Richard Beavers, Senior Technical Assistant, and Mrs Elizabeth Campbell, formerly Secretary to this Department; to the various contributors of information on points arising and of photographs; and to all who have rendered service, not only in the present but in previous editions. Lastly, we have pleasure in acknowledging indebtedness to our publishers for their co-operation and unvarying courtesy.

JOHN GLAISTER.

DEPARTMENT OF FORENSIC MEDICINE,
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CHAPTER I

GENERAL MEDICAL COUNCIL, MALPRAXIS, LEGAL PROCEDURE, AND NATIONAL INSURANCE (INDUSTRIAL INJURIES) ACT, 1946

MEDICAL Jurisprudence, Legal Medicine, or Forensic Medicine, is the science concerned with the application of medical knowledge to certain branches of the law, both civil and criminal. Since members of the medical profession are liable to be called upon to render professional assistance, of the most varied character, in medico-legal cases which may later compel their attendance at court, it is highly important that they should appreciate and understand both the medical and legal aspects of the subject. This involves on the part of the practitioner a knowledge of the medical aspects of the various criminal acts which may come under his consideration, of the medical bearing of various Acts of Parliament, and of the law of evidence.

THE GENERAL MEDICAL COUNCIL

The Medical Act, 1956, has consolidated enactments relating to medical practitioners, taken from twenty statutes of which the earliest is the Physicians Act, 1540, and the latest is the Medical Act, 1950.

The General Medical Council is the official body statutorily charged with the supervision of the medical profession in this country. The principal objects of the Medical Act are to supervise medical education and establish an official register of medical practitioners known as the Medical Register.

The General Medical Council consists of forty-seven representatives, of whom eighteen are appointed by the Universities in the United Kingdom having medical faculties, ten by the Medical Corporations, eight by Her Majesty in Council, three of whom must not be registered medical practitioners or holders of qualifying diplomas, and eleven by election by the medical profession. The Council is divided into branch councils for England, Scotland, and Ireland. Eire has had its own medical council and Register since 1927. Each of the branch councils has a separate Register.

The Medical Act enables the public to identify the qualified practitioner, but does not prevent the public from seeking medical assistance from unregistered persons.

The most important limitations which the Act imposes upon the unregistered practitioner are that he is forbidden to use any title which he does not possess, or to pretend that he is a qualified

doctor. He cannot recover fees in a court of law, poisons may not be supplied by him, or dispensed by a pharmacist on his prescription, and he cannot sign valid certificates. He is also precluded from holding medical appointments in the public service, and from practising under the National Health Service Acts, or from holding Crown appointments. He may not, apart from urgent necessity, attend maternity cases unless under the direction and personal supervision of a duly qualified medical practitioner, and he cannot, by virtue of the Venereal Disease Act, 1917, treat venereal diseases. Further, only duly qualified and registered medical practitioners, if they so desire, are exempted from serving on juries.

It is the act of registration which renders the practitioner legally qualified to practise, and not his medical qualifications. Therefore, it is most important that all who become medically qualified should be registered. The qualifications for registration are detailed in the Medical Act, 1956. Registration can only be obtained by application after passing a qualifying examination and producing a certificate of subsequent experience in medicine and surgery. The subsequent experience required is employment in a resident capacity in an approved hospital or institution. The time is prescribed by the Council after approval by the Privy Council. The certificate is granted by the body who granted the qualifying diploma. In order that people who have obtained qualifying diplomas may be employed in the capacities necessary to obtain the prescribed experience, provisional registration was introduced. Provisional registration can be obtained by anyone who has passed a qualifying examination, provided he can show that he has been selected for employment in the prescribed resident capacity. Persons provisionally registered are placed in a separate part of the Register, and the provisions which make it an offence for anyone falsely to pretend to be registered are extended to apply to provisional registration.

The duty of the Registrar is to keep the Register correct, and to erase the names of all registered persons who have died. To enable the Registrar to fulfil this duty, he may write to any registered person, at the address shown on the Register, to inquire whether he has ceased to practise, or has changed his residence, and if no answer is received within six months from sending the letter, the name of that person may be erased from the Register. A name so erased may be restored by direction of the Council.

The Council recommends the curriculum, and range of subjects of medical study, and ensures that adequate standards are maintained.

It is also responsible for the preparation of the British Pharmacopœia, and the regulation of the curricula and examinations for Diplomas in Public Health.

The Council, by enactment strengthened by decision of the courts of law in their interpretation of the Medical Acts, has attained the position of a court of justice. It performs this function by means of the Medical Disciplinary Committee. This committee consists of the President and eighteen other members of the Council, of whom at least six must be elected members of the Council and

at least two must be persons who are neither registered medical practitioners nor the holders of qualifying diplomas. The members of the Committee are appointed by the Council. A Penal Cases Committee decides in advance which cases shall come before the Medical Disciplinary Committee for inquiry. When acting as a court of medical discipline and conduct, the Disciplinary Committee conforms in procedure to that of a court of law, and has the power to compel attendance of witnesses, to administer the oath and to compel production of documents. An Assessor is appointed by the Disciplinary Committee for the purpose of advising them on questions of law arising in proceedings before them. The functions of the Assessor are defined in rules drawn up by the Lord Chancellor. The verdicts are either guilty or not guilty "of infamous conduct in a professional respect," and when the former verdict is pronounced, the sentence is erasure of the name of the offending person from the Medical Register. In certain cases sentence may be postponed and the offender may be ordered to appear for judgment following a period of probation.

Section 33 of the Medical Act, 1956, states that if any fully registered person :—

- (a) is convicted by any court in the United Kingdom or the Republic of Ireland of any felony, misdemeanour, crime, or offence, or
- (b) after due inquiry is judged by the Disciplinary Committee to have been guilty of infamous conduct in any professional respect, the Committee may, if they think fit, direct his name to be erased from the Register.

A conviction before a court-martial, or the court of another country, or the finding of a Divorce Court against a doctor that he has committed adultery with a patient, or a member of a patient's family, are not convictions within the meaning of Section 33. When, however, an inquiry is being made with regard to "infamous conduct," any finding of fact which has been made in any matrimonial proceedings in the High Court or the Court of Session in the United Kingdom or the Republic of Ireland, or in any appeal from such proceedings is to be considered as conclusive evidence of the fact found.

The verdict, "guilty of infamous conduct in a professional respect," has been defined in the Court of Appeal in the following terms :— "If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the Council to say that he has been guilty of 'infamous conduct in a professional respect.' " When the Committee has determined that a person's name is to be erased from the Register, it is the duty of the Registrar to serve notice of the determination of the Committee. Any registered practitioner on whom such notice has been served has the right to appeal to Her Majesty in Council within twenty-eight days of the service of the notification.

A medical practitioner's name cannot be removed from the Register merely at his own request, without compliance with certain provisions.¹

From time to time the Council have enlarged the scope of matters embraced within the meaning of the words, "infamous conduct in a professional respect." The following summary of the resolutions and decisions of the Council upon forms of professional misconduct, brought before the Council in the exercise of its disciplinary jurisdiction over the members of the medical and dental professions, has been published by the Council and is referred to popularly as the "Warning Notice."

The summary of instances of professional misconduct does not constitute a complete list of the offences which may be punished by erasure from the Register, and the Medical Disciplinary Committee is in no way precluded from considering and dealing with any form of professional misconduct, as, for example, adultery committed in professional relationship, which may be brought before them, although it may not appear to come within the scope or precise wording of any of the categories set out below.

Certificates, notifications, reports, etc.

Registered medical practitioners are in certain cases bound by law to give, or may be from time to time called upon or requested to give, certificates, notifications, reports, and other documents of a kindred character, signed by them in their professional capacity, for subsequent use either in the courts or for administrative purposes.

Any registered practitioner shown to have signed or given under his name and authority any such certificate, notification, report, or document of a kindred character, which is untrue, misleading, or improper, is liable to have his name erased from the Register.

Beside having his name erased, the medical practitioner may run the risk of criminal prosecution, as instance, cases of medical practitioners having been sentenced to imprisonment for issuing false medical certificates to members of the Armed Forces (see also p. 145).

Unqualified or unregistered assistants and covering.

The employment by any registered medical practitioner in connection with his professional practice of an assistant who is not duly qualified or registered, and the permitting of such unqualified or unregistered person to attend, treat, or perform operations upon patients in respect of matters requiring professional discretion or skill, is in the opinion of the Committee in its nature fraudulent and dangerous to the public health: and any registered medical practitioner who shall be proved to the satisfaction of the Committee to have so employed an unqualified or unregistered assistant will be liable to have his name erased from the Register.

Any registered medical practitioner who by his presence, countenance, advice, assistance, or co-operation, knowingly enables an

unqualified or unregistered person, whether described as an assistant or otherwise, to attend, treat, or perform any operation upon a patient in respect of any matter requiring professional discretion or skill, to issue or procure the issue of any certificate, notification, report, or other document of a kindred character, or otherwise to engage in professional practice as if the said person were duly qualified and registered, will be liable on proof of the facts to the satisfaction of the Committee to have his name erased from the Register.

This does not apply to the training of bona fide students, or the legitimate employment of dressers, dispensers, surgery attendants, and skilled mechanical or technical assistants, under the immediate personal supervision of a registered medical practitioner.

Sale of poisons.

The employment, for his own profit and under cover of his own qualifications, by any registered medical practitioner who keeps a medical hall, open shop, or other place in which scheduled poisons or preparations containing scheduled poisons are sold to the public, of assistants who are left in charge but are not legally qualified to sell scheduled poisons to the public, is in the opinion of the Committee a practice professionally discreditable and fraught with danger to the public, and any registered medical practitioner who is proved to the satisfaction of the Committee to have so offended will be liable to have his name erased from the Register (see p. 467).

Dangerous drugs.

The contravention by a registered medical practitioner of the provisions of the Dangerous Drugs Acts and the regulations made thereunder may be the subject of criminal proceedings, and any conviction resulting therefrom may be dealt with as such by the Committee in exercise of their powers under Section 33 of the Medical Act, 1956. But any contravention of the Acts or the regulations, involving an abuse of the privileges conferred thereunder upon registered medical practitioners, whether such contravention has been the subject of criminal proceedings or not, will, if proved to the satisfaction of the Committee, render a registered medical practitioner liable to have his name erased from the Register (see p. 478).

Association with unqualified persons.

Any registered medical practitioner who, either by administering anæsthetics or otherwise, assists an unqualified or unregistered person to attend, treat, or perform an operation upon any other person, in respect of matters requiring professional discretion or skill, will be liable on proof of the facts to have his name erased from the Register.

Advertising and canvassing.

The practices by a registered medical practitioner :—

- (a) of advertising, whether directly or indirectly, for the purpose of obtaining patients or promoting his own professional advantage ; or, for any such purpose, of procuring or sanctioning or acquiescing in the publication of notices commending or directing attention to the practitioner's professional skill, knowledge, services, or qualifications, or depreciating those of others ; or of being associated with or employed by those who procure or sanction such advertising or publication, and
- (b) of canvassing or employing any agent or canvasser for the purpose of obtaining patients ; or of sanctioning, or of being associated with or employed by those who sanction, such employment ;

are in the opinion of the Committee contrary to the public interest and discreditable to the profession of medicine, and any registered medical practitioner who resorts to any such practice renders himself liable on proof of the facts to have his name erased from the Register.

Association with uncertified women practising as midwives.

Any registered medical practitioner who, by his countenance or assistance, or by issuing certificates, notifications, or other documents of a kindred character, enables uncertified persons to attend women in childbirth otherwise than under the direction and personal supervision of a duly qualified medical practitioner, will be liable on proof of the facts to have his name erased from the Register.

By a Resolution adopted by the Council, any registered medical practitioner who knowingly and wilfully assists a person who is not registered as a dentist in performing any operation in dental surgery, either by administering anæsthetics or otherwise, will be liable on proof of the facts to be dealt with by the Council as having been guilty of infamous conduct in a professional respect.

The Council does not of itself initiate proceedings against members of the medical profession. It takes action only in cases of criminal conviction, or of judicial censure, officially brought to its notice, or in cases of formal complaints, supported by evidence, brought before it by responsible persons or bodies. When a member of the medical profession is convicted in a court of law, the fact is reported to the Council. After consideration of the facts by the Penal Cases Committee, the delinquent may be summoned to appear before the Medical Disciplinary Committee, or alternatively, he may be sent a warning that the matter has been noted and that there should not be a repetition of the offence.