

Studies in Law and Health Service Management

**AN INTRODUCTION TO
THE LAW RELATING TO
THE HEALTH CARE
PROFESSIONS**

P F C BAYLISS

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PROFESSIONS

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AN INTRODUCTION TO

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Preface

Doctors, dentists, nurses and all the thousands of members of other health care professions are subject not only to the ordinary laws of the land but to additional laws which, if broken, can be devastating in their repercussions.

These additional laws are those of their professions. Disciplinary tribunals can sit in judgement on an individual's conduct and, by removing his name from a professional register, strip him of his livelihood and possibly the last vestige of personal and professional self-respect. Such are the laws which necessarily safeguard the interests of the professions and the people they serve.

Members of the armed forces, accountants, estate agents, clergymen and lawyers are also subject to particular laws drawn up by statutory bodies entrusted by Parliament with the government of their respective occupations.

This book deals with the health care professions which, in addition to doctors, dentists, nurses and midwives, cover pharmacists, opticians, hearing aid dispensers, chiropodists, dieticians, medical laboratory technicians, occupational therapists, physiotherapists, radiographers, orthoptists and auxiliary dental workers. Because the veterinary profession is regulated in a similar manner, a chapter on this group is also included.

There are about 700,000 people in this country who come into the category of these health care professions. The table below shows the number of individuals registered in the various professions using information available at the beginning of 1987.

| | |
|-------------|---------|
| Nurses | 441,079 |
| Doctors | 126,448 |
| Midwives | 90,590 |
| Pharmacists | 35,581 |

| | |
|--|--------|
| Dentists | 24,592 |
| Medical Laboratory Scientific Officers | 19,400 |
| Physiotherapists | 18,900 |
| Radiographers | 14,209 |
| Health Visitors | 11,570 |
| Veterinary Surgeons | 11,500 |
| Occupational Therapists | 8,559 |
| Ophthalmic Opticians | 6,531 |
| Chiropodists | 5,789 |
| Dispensing Opticians | 3,208 |
| Dieticians | 2,352 |
| Orthoptists | 948 |
| Hearing Aid Dispensers | 612 |

Control of the health care professions is by no means a modern phenomenon at least not in principle. The code of Hammurabi, for instance, written in Mesopotamia 4,000 years ago, included strict laws governing physicians. They left him little room for error if he was to continue his career. He was to be paid ten shekels of silver if he cured a nobleman's wound but have *his* hand cut off if his treatment caused the nobleman's death. Since then single-handed practice has, happily, taken on a different meaning.

The laws under which members of the health care professions work are concerned not only with their professional conduct but also with the extent to which a certain profession may be practised only by individuals on a register and with the nature and quality of the training and experience required for registration.

The existence of such a separate and additional body of law raises some important general issues. For example, what powers should be entrusted to any professional tribunal outside the ordinary system of law courts? To what extent is it acceptable for bodies outside Parliament to make rules which have the full force of law? Such issues are discussed in this book, and the controls that exist to prevent the excessive use of such powers are described.

The book is divided into two parts. Part I deals with the main aspects of the legislation, topic by topic, and draws on examples from all of the professions dealt with. Part II gives a more detailed presentation of the law, profession by profession. It is suggested that all readers should read Part I together with the chapter in Part II relevant to their profession.

Although this is a book about the law it is not written primarily for lawyers but for the professionals who are directly affected by it. It is essentially a full introduction to the subject rather than a legal practitioner's reference book. Any health care professional who finds himself at variance with this body of law would be well advised to seek expert help and advice.

There is no good time to write a legal text, and during the period this book was being researched and written major new law was enacted dealing with the medical profession (the Medical Act 1983), with dentists (The Dentists Act 1984) and with nurses and midwives (the Nurses, Midwives and Health Visitors Act 1979). The law in this professional area does change fairly frequently and this may be seen as a healthy sign. The law stated in this book represents the sources to hand at the beginning of 1987.

It is hoped the book will be of interest and value to all members of the professions covered, anyone training for one of these professions, lawyers seeking an introduction to the subject, and anyone else with an interest in the control of the health care professions.

P. F. C. Bayliss

July 1987

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P. F. C. Bayliss

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PART I

Chapter One

Review of Legal, Historical and Social Aspects

Historical Background

Most of the ancient civilisations had a variety of codes controlling professional practice, but in this country the development of our modern system of control can be dated from the appearance of the ancient guilds.

The City of London guilds first appeared almost 1,000 years ago, the earliest written charter being granted by Edward the Confessor who died in 1066. They were essentially brotherhoods of members of a trade, usually governed by a Council of 12 men elected from their numbers. The main privileges of each guild were to enjoy a monopoly over its particular trade in the city, to hold property and to exercise a power of discipline and punishment over its members, and over non-members who infringed its rights. The guilds controlled entry to their trades by use of apprenticeships, and they guarded their trade secrets closely. As their influences and privileges grew disputes broke out between them over certain areas which each claimed as its own. For instance, in 1226 the goldsmiths and the tailors decided to settle a dispute by a battle with 500 members on each side; the ringleaders, however, were arrested and 13 were executed.

Many of the principles of the guilds will be found in the modern-day legislation which controls the health care professions. There is an attempt to delineate each profession one from another, to regulate admission to it by means of a common

standard of training, to exercise a disciplinary power over its members in their professional practice and to punish unauthorised practice. Problems of overlap between professions still cause occasional difficulties, although resort to massed battle with 500 aside has been replaced by less militant means of solution. An apparent difference between the form of control exercised by the guilds and that used today is that the guilds regulated their activities from within the brotherhood and now it is Parliament which creates the framework of controls. The professional bodies, however, still have great powers to make specific rules which have the force of law and to exert disciplinary powers.

Later Developments

As will be seen later in this chapter, the present-day legal controls over the health care professions have developed over the last 100 to 140 years. This has been associated partly with a more rapid evolution of these professions over that period and partly with the growth of a more systematic approach to public health from the early nineteenth century, culminating in the modern-day health services. However, a brief account needs to be given of the long gap in time from the days of medieval guilds to the nineteenth century.

This time gap may be thought of in two overlapping phases. In the first phase, from the Norman Conquest to the sixteenth or seventeenth centuries, there was relatively little scientific or technical development in the various health care professions which then existed. The guild system controlled the practice of medicine, surgery and dentistry, the monasteries acted as hospitals and provided a nursing service to the sick and the poor, and midwifery was essentially a domestic art passed from mother to daughter. Such development as did occur over this period really amounted to no more than the consolidation of existing practices.

The second phase, however, was a period of rapid scientific and technical growth dating from the Renaissance. The disciplines of anatomy, physiology, medicine, surgery and pharmacy developed rapidly in parallel with the sciences of chemistry, physics and botany (the sole source of *materia medica* at the time). This period was followed in the nineteenth century by many improvements in public health as the infective nature of much disease (the germ theory) became increasingly recognised. It was this nineteenth century phase that set the scene for the development of today's legislation.

Later in this chapter a brief historical introduction will be given to each of the professions dealt with. The bibliography at the end of this book suggests sources where the reader can obtain fuller accounts of these historical aspects.