

THE RELATION OF THE MEDICAL PROFESSION TO THE PUBLIC.

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A communication made to this Society a year or two ago by Mr. R. J. P. Mortished on Labour Organisations in Ireland suggested to me that it would be informative if various members were induced to contribute to our proceedings accounts of the several professions or occupations which serve the public, surveying their special functions and their relations to the community. In undertaking a brief survey of this kind as regards the medical profession I hope that other members may be persuaded to give us accounts of other vocations. In particular, a study of how the legal profession or how the Civil Service is related to the community would be of value.

What are the functions which are demanded of the members of the medical profession? In the simplest relation the individual seeks personal advice on a matter concerning his own health, usually only when it is impaired and he seeks for means to restore it to the normal. Medical men, like lawyers, speak of "giving advice," but in both cases their functions go much further. The adviser himself assists in the carrying out of the advice and often acts in an executive capacity for his patient or client. A surgeon advises the performance of a surgical operation, and if his advice is accepted he performs it himself. A solicitor advises the taking of certain proceedings, and he himself conducts the proceedings. This dual function is due to the fact that many of the procedures used in the treatment of disease as in legal process are highly technical and can only be properly performed by those who are skilled in the special technique. Medical men must possess not only knowledge but skill. Medicine is not only a science but an art.

In the modern development of the curative art it has been unavoidable that specialisation should take place at an increasing rate, and hence it has come about that there are many members of the medical profession engaged in work ancillary to the treatment of patients who themselves never come into direct contact with the patient. And, over and above all those who are engaged directly or indirectly in curative work, we

have an increasing number of medical men whose task is to prevent disease. In modern times it is recognised that one of the duties of the community towards its own members is to preserve health, and in this task it finds it necessary to call to its aid the services of skilled persons. We have therefore an increasing number of workers in preventive medicine—medical officers of health, medical inspectors of school children, welfare workers, researchers. In addition to such duties as can readily be classified as concerned with curative and preventive medicine, medical men are called on to perform many other duties requiring the knowledge which they alone possess, as, for example, advisers to government departments, to industrial concerns, to life insurance societies, or as witnesses in legal proceedings.

The medical profession therefore has as its duty to the community, the giving of advice and the execution of functions designed to protect and improve the health of the community, both in general and in particular. And, however much may be the degree of distribution of duties, the profession retains, both as between its members and in its relation to the outsider, a definite solidarity. Such solidarity has a considerable influence in maintaining a recognised ethical standard.

It will be admitted that for the due performance of many of the duties just suggested it is of importance that there should be some guarantee both of the degree of knowledge and of the character of those who undertake such responsible work. For centuries the need for such guarantee has been recognised in most civilised countries, and each has taken its own steps to secure it. State control in a strict sense is, however, a comparatively modern development and only began in Great Britain and Ireland in 1858. As long ago as 1511, however, a Medical Act was passed in England which enacted that no one should practise as physician or surgeon in London or within seven miles of its walls except he be examined and licensed by the Bishop of London or the Dean of St. Paul's with the aid of competent doctors of physic as assessors, and that in the provinces the duty of licensing medical practitioners should rest similarly with the bishop of the diocese. (It is of some interest to the curious that the Archbishop of Canterbury still possesses the right of conferring the Degree of Bachelor in Medicine, though a degree obtained from such a source does not carry with it any legal privilege. Persons possessing such a degree in 1858 were thereby entitled to be registered as medical practitioners.) In 1518 the College of Physicians was founded and was made responsible for the regulation of the practice of

physic in London and for seven miles round, and in 1522 its duty was extended by statute to the whole country.

As my purpose at present is not historical it is unnecessary to trace the control of the medical profession in England from 1511 to 1858, or that of the profession in Ireland prior to 1858. I proceed at once to consider the Medical Act of 1858, as its principles pervade all subsequent Medical Acts of the British legislature, as well as the Medical Practitioners Act, 1927, of the Irish Free State.

The Act of 1858 (21 and 22 Vic., Cap. 90) is entitled "An Act to Regulate the Qualifications of Practitioners in Medicine and Surgery," and its object is stated in a preamble of one line: "Whereas it is expedient that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners." This preamble was subsequently repealed, but its spirit governs not only the Act of 1858 but all subsequent Medical Acts.

In order to fulfil this purpose the Act directed the establishment and maintenance of a Register of Medical Practitioners under the control of a Council which should be established with the style of "The General Council of Medical Education and Registration of the United Kingdom." This title is of great importance in that it defines the duties of the Council as being concerned with medical education and registration. The Council is thereafter referred to as the "General Council." Unfortunately, it may be remarked in parenthesis, the public and the profession came to speak of it as the "General Medical Council," a name which suggests wider duties and responsibilities than it possesses. More culpably the Council itself adopted this title, and it has even slipped into some subsequent statutes. This loose terminology has led to much misunderstanding, and the public has come to regard the General Council as a kind of Parliament of the medical profession possessed of all kinds of wide powers and exercising them for the benefit of the profession. It is commonly confused with the British Medical Association and other purely voluntary bodies of medical men associated together for scientific or protective purposes. The General Council is, on the contrary, the machine devised by the State to enable persons requiring medical aid to distinguish qualified from unqualified persons, and it has no general powers except in regard to education and registration, though certain specific duties have also been cast on it, of which the chief is the preparation and publication of a *Pharmacopœia*. As will be seen presently it is in no sense representative of the medical profession.

The Council, in the first instance, was to consist of twenty-five persons, of whom eighteen were to be chosen by certain universities and corporations mentioned in the Act, six to be nominated by Her Majesty, with the advice of her Privy Council, and one, a president, to be elected by the General Council thus constituted. The universities and corporations mentioned in the Act are the same as those enumerated in a schedule thereto as granting degrees or licences which are to be regarded as giving the holder thereof a right to register. It is provided that members of the General Council representing the medical corporations must be qualified to be registered under the Act, but no such qualification is required in the case of representatives of the universities nor of persons nominated by Her Majesty. As a matter of fact, no person other than a qualified medical practitioner was appointed a member of the Council from its foundation in 1858 until 1926, when His Majesty saw fit to appoint a layman as one of the persons appointed by him. Since 1858 the constitution of the Council has been added to in two ways. The several universities which have sprung into being since that date have each been given the right to nominate a member, while at the same time their medical degrees have been added to the schedule of registered qualifications. Moreover, by the amending Act of 1886 the qualified practitioners on the register were given the right to elect five of their own members as "direct representatives." Of these, three were to be elected by the practitioners resident in England, one by those in Scotland and one by those in Ireland. The number of direct representatives for England has since been increased to four. By the Act of 1886 it was also provided that the President should thereafter be elected from among the members of the Council. As at present constituted the Council consists of thirty-eight persons, of whom eighteen are chosen by universities, nine by medical corporations, five by the King, and six by the profession. Of the total thirty-eight, therefore, only fifteen are chosen by professional electorates, namely, the medical corporations and the qualified practitioners, and only these fifteen are of necessity members of the profession.

The function of the Council is to guard the Register. It is bound to register any person who possesses the qualifications enumerated in the Schedule to the Act on payment of the required fee. Nevertheless, it has certain duties in regard to the course of education and examinations undergone by candidates for the several degrees and licences which give admission to the Register. It is entitled to demand and receive information from the qualifying bodies as to the courses of study and

examinations to be gone through to obtain the respective qualifications, the ages at which such courses and examinations are required to be gone through, and generally as to the requisites for obtaining such qualifications. Moreover, it can, either by members of the Council itself, or by other persons appointed for the purpose, inspect the examinations. The Council is in the habit of issuing advice either individually or generally to the qualifying bodies regarding courses of study and examinations. It has no direct power of enforcing such advice, but it has an important indirect power in that in case it appears to the Council that the course of study and examinations to be gone through in order to obtain a certain qualification are not such as to secure the possession by persons obtaining such qualifications of the requisite knowledge and skill for the efficient practice of their profession, it may represent the same to the Privy Council; and upon any such representation being made the Privy Council may, if it see fit, order that such qualifications shall not confer any right to be registered. Such order may be revoked on further representation being made by the General Council. Though this power has never been exercised by the Council there are very few instances in which any body has remained obdurate to the advice of the Council on matters of education and examination, and in those few instances the matter was not of prime importance. One other duty is cast on the Council in regard to the practice of the qualifying bodies. If it appears to the Council that any attempt has been made by any body to impose upon any candidate offering himself for examination an obligation to adopt or refrain from adopting the practice of any particular theory of medicine or surgery as a test or condition of admitting him to examination or of granting a certificate, the Council may make representation to the Privy Council, which may issue an injunction to such body so acting, ordering it to desist from such practice, and, in case of its refusal, may order that such body shall cease to have the power to confer any right to be registered so long as it continues the practice.

This concludes our survey of the duties and powers of the Council in regard to its control of admission to the Register. Its duties and powers in regard to erasure from the Register are equally important. We need not delay to consider the duty cast on the Registrar to see that the Register is kept correctly by the removal of the names of those who die and of those who cannot be traced. Apart from this, the purity of the Register is to be preserved by the Council fulfilling its duties under two sections of the Act (28 and 29), which I quote in full:—

28. *Names of members struck off from list of college, etc., to be signified to General Council.*—If any of the said colleges or said bodies exercise any power they possess by law of striking off from the list of such college or body the name of any of their members, such college or body shall signify to the General Council the name of the member so struck off; and the General Council may, if they see fit, direct the Registrar to erase forthwith from the Register the qualifications derived from such college or body in respect of which such member was registered, and the Registrar shall note the same therein: Provided always that the name of no person shall be erased from the Register on the ground of his having adopted any theory of medicine or surgery.

29. *Medical practitioners convicted of felony may be struck off the Register.*—If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due enquiry be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the Registrar to erase the name of such practitioner from the Register.

Three points in regard to these sections are of importance:

- (1) That every erasure is at the discretion of the Council.
- (2) Wide liberty is given to the Council in its interpretation of the words, "infamous conduct in any professional respect."
- (3) That an aggrieved person has no right of appeal against the decision of the Council.

In regard to the first point, that the erasure of a name depends on the opinion of the Council, it is to be noted that no crime or misconduct renders it obligatory on the Council to erase a name unless they see fit. As a matter of fact, a practitioner convicted of treason by the military power has remained undisturbed on the Register, the Council, it is understood, considering that such a conviction did not necessarily imply such a degree of moral turpitude as to render the practitioner unsuitable for the practice of his profession. In the case of minor offences, such as conviction for drunkenness, the Council seldom judges erasure necessary for a first offence. There is no doubt, nevertheless, that the power resting in the hands of the Council acts as a deterrent.

The next point of importance is the great freedom given to the Council in the use of the term "infamous conduct in any professional respect." As time has passed, the deno-

tation of this term has become wider and wider. New precedents have been established from time to time, and there appears to be no check on the application which the Council may give to the term. This is clearly brought out in the judgment of Lord Justice Lopez in *Allison v. General Medical Council* (63 L.J.Q.B. 534), the leading case on the powers of the Council in this respect. He said: "If it is shown that a medical man, in the pursuit of his profession, has done something with respect 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 sense." The more important offences which have been so adjudged by the Council fall into the following groups:—

Immoral relations between practitioner and patient, where a professional relation exists. Such cases, previously rare, are becoming more frequent in England in recent years.

Signing untrue, misleading or improper medical certificates.

Offences against the Dangerous Drugs Act, whether they have led to criminal proceedings or not.

"Covering" an unqualified person, and professional association with unqualified persons.

Advertising, canvassing or touting for patients.

It is only with regard to the two latter classes of offence that any criticism has arisen as to the discretion of the Council in adjudging them to be "infamous in any professional respect." It is sometimes suggested that in regard to such offences the Council is thinking more of the protection of the profession than of the protection of the public, and is thereby misconstruing its function. It is necessary to ask whether the criticism is justified. The term "covering" is applied to such conduct on the part of a registered practitioner as may enable an unqualified person "to attend, treat or perform any operation upon a patient in any matter requiring professional discretion or skill . . . or otherwise to engage in professional practice as if such person were duly qualified and registered." The Council regards such conduct as in its nature "fraudulent and dangerous to the public health." (Warning Notice issued by the Council.) It condemns, therefore, both employment of unqualified assistants and professional association with unqualified persons. The attitude of the Council depends on its view that the chief purpose of the Register is, in the words of the preamble to the Act of 1858 (though the words have been since repealed), "that persons requiring medical aid should be enabled to distinguish qualified from unqualified persons." While therefore the British law does not forbid

practice of medicine by unqualified persons, it recognises the desirability of distinguishing between qualified and unqualified persons. Such distinctions would become blurred in the public mind if qualified persons were to act in professional co-operation with unqualified. This appears to be what is in the mind of the Council in its use of the term "fraudulent." On a broader ground a good defence may also be made. It would clearly be impossible and beyond the scope of the Council to decide on the relative claims to knowledge and skill of persons who neglect to secure the minimum degree of knowledge and skill which can win a registerable diploma. It is bound, therefore, to regard in one class all unqualified practitioners. No one would blame the Council if it regarded as infamous conduct in a professional respect the covering of the practice of a cheap-jack at a fair, but from the legal point of view the cheap-jack is, in regard to the Register, in the same position as the fashionable bone-setter, however great may be the skill of the latter in one department of surgery.

In regard to advertising and canvassing for patients, the case is perhaps more open. Many people nowadays, and in particular the newspaper proprietors who make their living from advertisers and take so large a share in moulding public opinion, see no reason why anyone should not advertise as much as he pleases. One may remark that in its attitude on this matter the General Council, as the State authority over the medical profession, acts in the same way as the authorities over both branches of the profession of law, and in consonance with professional usage, not only in these countries but throughout the civilised world. A profession must beware of acting by the same standards as a trade, and any lowering of the ethical standard of any profession is a danger to the community. One can hardly believe that it would be for the advancement of science and the advantage of the community that the activities of medical practitioners should be devoted to the cult of publicity rather than to the development of their skill. The success of an individual practitioner has depended on his reputation for skill and honesty, and it is not likely that as accurate a reputation can be gained by the arts of advertisement as by honest work.

It is sometimes urged that the Council, by its condemnation of advertising, prevents the free discussion by medical practitioners of matters of public interest. It is said, for example, that for a medical man to write a signed article on a medical topic in a public print may bring on him the condemnation of the Council. The Council has never taken such a posi-

tion. It only condemns advertising "for the purpose of obtaining patients or promoting his own professional advantage," and it is only concerned with "the publication of notices commending or directing attention to the practitioner's skill, knowledge, services or qualifications, or depreciating those of others." In dealing with particular cases of this kind the Council has never taken exception to writings in the press except where it was clear that the object of the writer was his personal advantage.

In regard to frank advertisements the Council is, however, open to serious criticism on a minor point. It has not, up to the present, taken any step to prevent the appearance in the professional press of advertisements for proprietary sanatoriums, medical homes, hospitals for the insane, and other institutions which give treatment and are run for profit by medical practitioners, with or without the publication of the names and qualifications of the proprietors. The Council would, for example, condemn a medical man who advertised that "Dr. Brown sees patients between the hours of 2.0 and 4.0 at 501 Harley Street, W." But Dr. Jones can advertise his "private nursing home for neurasthenic and allied functional nervous disorders" or his "home for twilight sleep," adding his name and qualifications, and the Council takes no notice of him. There is no real distinction here, and the anomaly should be ended.

The fact that decisions of the Council are not subject to appeal unless a question of *bona fides* can be raised has given rise to criticism. It had been urged that the power of depriving a professional man of his professional status is too great to be entrusted to any tribunal other than an established court, and that it is contrary to usage in the administration of justice to permit such power to be exercised by any tribunal without a right of appeal. Such criticism has had, it will be seen, an influence on the legislation of the Irish Free State.

I have mentioned incidentally that the Medical Acts nowhere prohibit practice of medicine and surgery by unqualified persons. The practice of different countries varies greatly in this respect. In 1909 an investigation on this point was made by the General Council, and it found that in some 82 British possessions and foreign countries the practice of medicine was forbidden to unqualified persons under pain of fine or imprisonment. The list included France, Belgium, Sweden, Spain, Italy, most of the United States, and the province of Canada. In twelve there were no laws regulating the practice of medicine. In twelve certain privileges were reserved to qualified practitioners and medical titles were protected against wrong-

ful use. This last group of twelve consisted of Germany, the United Kingdom, and ten of the states in the British Commonwealth. It will be seen, therefore, that the freedom given in Great Britain to unqualified practitioners is unusual. It is somewhat curious that the practice of dentistry is forbidden to unqualified persons in the United Kingdom, and the Bill at present before the Oireachtas proposes to prohibit it in the Irish Free State.

In the United Kingdom, then, an unqualified person is at liberty to practise, but he is prohibited under penalty of a fine not exceeding twenty pounds from posing as a registered practitioner or from adopting any title or description implying that he is registered or is recognised by law as a practitioner in medicine. On the other hand, a registered practitioner has the privileges of recovering fees at law, of being capable of holding certain appointments, of signing certificates, and of exemption from service on juries.

The Act of 1886 gave the Council power under certain well-defined conditions to establish reciprocal relations as to the Register with foreign countries and British possessions.

I have gone somewhat fully into the constitution, powers and practice of the General Council, because, although the General Council is no longer the authority in control in the Irish Free State, the spirit of its constitution underlies that of the Medical Registration Council of the Irish Free State. The powers, with one important exception, are the same, and the practice of the General Council is bound to have a strong influence, for the present at any rate, on the practice of the Irish Free State Council.

In future the Medical Registration Council will exercise in the Irish Free State almost the same powers as those previously exercised by the General Council, but there is one very important check on their powers. As we have seen, a person whose name was erased from the Register by the General Council had no appeal to any court unless he could establish *mala fides* on the part of the Council. The Medical Practitioners Act of the Irish Free State gives such a person a right of appeal to the High Court and gives the High Court power to give such directions as it thinks proper, including a direction that the name of the appellant be restored to the Register, and also directions as to costs. The decision of the High Court is to be final and no further appeal is to be allowed. It is further provided that, on the hearing of an appeal under this section (Section 28), the High Court may, if it thinks proper so to do, admit and have regard to evidence of persons of standing in the medical

profession as to the nature of conduct which is infamous in a professional respect.

This check on the powers of the Council introduces a new principle into the discipline of the profession. Hitherto, in practice though not in theory, a practitioner was tried by a professional tribunal for a professional offence. In future he will have the right of appeal to a legal tribunal. The experiment is interesting, but there is reason to doubt whether a judge, however capable as a judge, is as competent to form an opinion on the propriety of conduct in a profession to which he is a stranger as members of that profession. He cannot be familiar with its customs, its ethos, its point of view, in all of which the appellant participates equally with the members of the purely professional tribunal. It is not likely that the permission given to the Court to admit evidence as to the nature of infamous conduct will help much. One sees vistas of queues of expert witnesses behind the parties to the suit. It would perhaps have been more helpful if the Court had been given power to obtain the assistance of a medical assessor, following a well-established precedent. While, therefore, I am doubtful of the success of this innovation, I well recognise the case that can be made that in such an important matter as the deprivation of professional status, involving often the loss of livelihood, the right of ultimate decision should rest with an established court of the land.

While this admission of the right of appeal is the only new feature of importance in our Irish system, it is necessary to say something of the constitution of the Council. It consists of eleven persons, of whom two are nominated by the Executive Council, one by each of seven corporations named in the Act, and two, who shall be registered practitioners, are elected by registered medical practitioners resident in the Irish Free State. No special qualification is laid down for any except the two direct representatives. Only two of the eleven members are therefore of necessity medical practitioners. It will be remembered that the members of the General Council who represented medical corporations as well as the direct representatives were to be registered practitioners. Of the seven corporations in the Irish Free State entitled to nominate members only three are strictly professional. The others are universities or university colleges. The Irish Free State Council therefore, like the General Council, is not to be regarded as in any sense representative of the profession. It is, like the other, a machine devised by the State for the protection of the State.

An unexpected and, I think, unintentional anomaly occurs

in the enumeration of corporations which are given the right of nominating members of the Council. In the British Acts the strict principle was followed of giving representatives to every university or other corporation which conferred a registerable degree or licence. In the Irish Act this principle is only partially followed. The National University, the degrees of which are registerable, has no representative as a university. But each of its constituent Colleges—none of which, apart from the University, has any power to grant degrees or licences—nominates a representative. This anomaly is not likely to give rise to any practical inconvenience.

The question is sometimes asked whether the establishment of a home council is likely to lead to any stricter discipline of the medical profession in the Irish Free State. Up to the present the General Council has only at the rarest intervals been called on to consider any charge against a practitioner practising in Ireland. (In parenthesis, I may add that our Irish graduates and licentiates practising outside Ireland likewise have only rarely been called upon to defend themselves.) It is possible, however, that charges of a minor sort, such as of drunkenness or of negligence, which complainants would have been slow to bring before a tribunal sitting in London, may come to a tribunal sitting in Dublin. Time alone will decide this. While there does not seem to be much need for the Irish Council to exercise a more strict discipline than was exercised by the General Council in the realm of medical education, its influence could do much to raise the already high standard of the Irish schools. In certain matters of education the influence of the General Council has been to depress the Irish level to the English and to tend to deprive us of certain advantages of which we should make the most.

This concludes the description of the machinery by which the control of the medical profession on behalf of the State is exercised. It is worth while, however, to consider this machinery for a moment from a critical point of view.

In origin the constitution of the Council was based on the existing licensing bodies, and appeared to be a co-ordination of existing authorities rather than something invented anew. No transfer of authority was formally made to the profession itself although in practice it has worked out that the Council has been a professional body, deriving its authority, however, from other than professional sources. The Council has been in a sense a Vocational Council, but a Vocational Council formed in the main by nomination, not by election. Its success as a machine has probably been due to this vocational character. In

forming the Council the basis was educational, and the great majority of the members of the Council since its foundation have been teachers and often whole-time teachers who have no experience of general practice. (At one time the representatives of all three universities of Ireland on the General Council were professors of anatomy who had never been engaged in practice.) A body so constituted may be admirably fitted for performance of the educational part of the Council's duties, but has not the most useful kind of experience for the disciplinary part. The Council would be strengthened in this respect if it contained a larger proportion of elected representatives of the profession. I think that it was unfortunate that in the constitution of the Council of the Irish Free State the profession was not given a larger direct representation. Such representation would increase the confidence of practitioners in the competence of the Council.

Apart from the control exercised by the Councils, the profession has certain domestic controls of importance. The control of the State, as described above, only attempts to lay down a certain minimum of knowledge and a certain minimum standard of conduct, failing which a practitioner cannot reach the Register or is excluded therefrom. The several chartered corporations, however, within the profession, and also the voluntary professional associations, such as the British Medical Association and the Irish Medical Association, exercise a very definite control over their own members.

The Royal Colleges demand from their licentiates, members and fellows specific declarations of good conduct and of submission to the will of the College. These declarations are generally backed by bye-laws governing matters of detail. In case of disobedience to the bye-laws or failure to observe the terms of the declaration the Colleges have power to "censure" those under their jurisdiction or, in grave cases, to recall their licences.

It may well be that certain conduct which could not be judged "infamous in any professional respect" and therefore punishable by exclusion from the Register, may be deserving of some lesser punishment. In this respect the Colleges perform a function for which the Councils have no power. This discipline exercised by the Colleges has a chastening effect, and no doubt acts as a warning to some who might be inclined to stray further from professional rectitude. The Royal Colleges, too, have a definite function to perform in defining what men of good standing in the profession regard as proper professional conduct. The voluntary societies, in addition to their

functions of promoting medical knowledge and protecting professional interests, exercise a specially important function by their power of collective bargaining. It would have been impossible for the great scheme of medical benefit under the National Health Insurance Acts in Great Britain to have been carried out if there were not some professional organisation, such as the British Medical Association, with power to speak on behalf of its members and to speak with the assurance that its members would stand to any bargain made on their behalf.

So far we have been considering the official relations that exist between the medical profession and the State. There are, however, several other relations of importance between the profession and the community. On some of these misunderstandings or even controversy is not infrequent, and I will discuss a few of them briefly.

On one topic which comes closely home to the most intimate relation between doctor and patient there has been much discussion in recent years. I speak of the professional confidence which exists between the doctor and his patient. From the earliest times it has been recognised that what a medical man learns of his patient or of his patient's affairs is a matter of confidence which should not be divulged to a third party. In the oath of Hippocrates, much of which is as applicable to-day as it was two thousand years ago, the taker of the oath swears, *inter alia*: "Whatever, in connection with my professional practice, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret."

The question at issue then is not whether the relation of doctor and patient is confidential or not, but whether that confidence is properly open to any exceptions, and, if so, to what. It is first to be noted that the law does not recognise any special privilege as belonging to such relation. In the interests of the public medical men are ordered by law to divulge to the public health authority the fact that a patient suffers from a certain infectious disease. Moreover, a medical man who is called as a witness in a law suit cannot at law plead any special privilege for knowledge gained in his professional capacity. In a recent case in England in which the secrecy of such knowledge was already guaranteed by law (*i.e.*, by the statutory regulations of the Ministry of Health) a medical man was ordered by a judge to divulge his knowledge or to stand committed for contempt of court. Many medical writers are of opinion that in cases where loyalty to his patient clashes with obedience to the law the medical man should hold by his professional obligation.

This is quite a different proposition from holding that the law should be changed and that professional confidence should be rendered immune by law; as is the case in France. For myself I do not admit that an individual citizen has a right to set his judgment in such a matter in opposition to established law. I cannot agree that the duty of observing professional confidence is so paramount as to over-ride all other duties. My doubts on this point are strengthened by the fact that many of those who hold the "high" view of medical duty as against the law are quite willing to admit other exceptions to the rule of confidence, exceptions depending not on the will of the community, as expressed in the law, but on the judgment of the individual. To the other question as to whether the present law is in the best interests of the community or not, the answer seems to me to depend on another question which goes to the root of our conception of values in society. While the law does not grant privilege to communication between doctor and patient, it does give privilege to communications between solicitor and client. In a reasoned article published a few years ago by Lord Birkenhead he poured ridicule on the suggestion that the relation of doctor and patient should carry any privilege in the eyes of the law, and he had no difficulty in showing that such privilege, if it existed, would sometimes result in the withholding from a court of knowledge which might be helpful to the administration of justice. This argument appeared to settle the dispute. But the privilege granted to the relation of solicitor and client was entirely forgotten, and every argument marshalled against professional privilege in regard to the relation of doctor and patient holds with no less force as regards the relation between solicitor and client. The defence for recognising privilege for the relation of solicitor and client is based upon the conviction that without such privilege many clients would be unable to get expert legal advice. It is at least arguable that in so far as patients have reason to fear that their confidence to their doctors may be divulged, in so far they are liable to be deprived of expert medical advice. There is no doubt that the success of the clinics for venereal diseases established in England by the public authorities would have been impossible without the legal assurance—now destroyed by a judicial decision—that the records of the clinics were secret. This brings us to the fundamental question of values to which I have alluded.

The question is whether the administration of justice or the care of health is the more important to the community.

In the past the administration of justice between man and man has been regarded as an essential duty of the State, second

only to protection against external enemies. It is, however, worth considering whether protection against disease is not at least as important as protection against human enemies, external or domestic. In the sum of human unhappiness ill-health is probably responsible for a greater share than injustice. If this is so it may be necessary for us to revise our scale of values. I only propose the question, but I submit that the answer to it is fundamental to a true understanding of the question of the degree of respect to be given to professional confidence.

The general public has a deep suspicion of the rules of conduct grouped together under the name of "Medical Ethics." These rules are often looked on as designed to establish some common understanding between medical men by which they combine in their own interests and against the interests of the community. They are evidence for the point of view put by Mr. Bernard Shaw in the mouth of one of his medical characters: "We're not a profession; we're a conspiracy." The rules of medical ethics are, however, nothing but the general laws of morality applied to the special problems likely to arise in medical practice.

I have already discussed the rule of professional secrecy, without the due observance of which efficient treatment will be maimed. Incidentally, I have referred to the matters of "covering" and advertising, commonly regarded as "infamous conduct in a professional respect" by the General Council. But let us take as an example a rule of less importance of which the public utility is not at once apparent, and ask whether it is designed in the public interest or not. It is a rule that a medical man introduced to a patient by his own doctor as a consultant or substitute should not himself accept the function of medical attendant to such patient. It is suggested that such self-denying ordinance may work so as to limit the right of any patient to choose his own doctor. This is true, and the patient should understand in advance that he is submitting to such limitations. But suppose that any consultant or substitute were free to replace his introducer in attendance on his patient we should have much more serious results. A medical attendant would be reluctant to suggest a consultation, as he would enter the consultation without the proper confidence in his consultant. He would fear that attempts would be made to undermine his patient's confidence in him or he would look with suspicion on every casual remark by the consultant which might bear an ambiguous meaning. A consultant has an important place in medical practice in the interests of the patient, but if the consultation is to be effective there must be perfect confidence be-

tween the parties thereto. If one party has any prospect of personal advantage to be gained by discrediting another mutual confidence will suffer, and likewise the patient's interests will be injured. It would be easy to show in regard to any other rule that it equally is framed with the single object of rendering medical practice more efficient in its service to the patient.

It is seldom understood that while medical men hold themselves out as medical practitioners they retain a complete right to limit their practice in any way they think fit. It is common for many of them to limit themselves to treating certain classes of disease, but they are equally at liberty to limit themselves in any other way they please by the fees they charge, by the hours they work, or as to the people they attend. In their own interests they are not likely to place any silly or offensive limitation on their practice; if they do so they are their own masters. A medical man, like any other professional man, is entitled to accept or refuse a particular engagement. The public has no right to quarrel with this, but the public has the right to demand that if a medical man accept the care of a patient he shall give that patient his best attention, and this regardless of the question whether he is paid for his services or not. A free patient has at law the same right as any other to bring an action on account of negligence or for malpractice.

But this brings me to another point in regard to which the public generally appear to have some degree of misunderstanding. Demands are constantly made that a man's professional services should be given gratuitously not only in the case of poor people but in any sudden emergency. No such demands are made on other classes of the community. A lawyer is not expected to perform professional services without remuneration, and indeed I understand that for a barrister to do so may draw on him the censure of his colleagues. A doctor who refused to a sick man what assistance he could render, even when there is no hope of remuneration, is regarded as guilty of barbarous conduct. But no one blames a shopkeeper for his refusal to give food and drink to those who may be starving outside his door. What his stock-in-trade is to the shopkeeper, his time and skill are to the doctor. I do not suggest that medical men should be niggardly in their charitable activities, but the public should recognise that such work is given of grace and not of right, and is as truly and really charitable as it would be for a merchant to give away his goods or a rich man his money.

I have not touched so far on the nature of the contract between a medical man and those who engage him, or on the question of the principle on which remuneration of a medical

man for his work should rest. Should he be paid for each specific service? Should he be paid a salary to perform certain duties? Or should he be paid, not to treat disease, but to preserve health? No doubt all these methods are in use for particular purposes. The ordinary relation between practitioner and private patient is based on payment for specific services. Contract practice—as under the panel scheme in Great Britain or the poor law service in this country—is based on payment for medical attendance on a certain number or class of people without counting the actual services rendered. We pay other medical men, those engaged in preventive work, to preserve health rather than to treat disease. It is stated, untruly I believe, that in China the custom has been to pay a medical man only while his patient is in good health and to punish him for his patient's illness. Such a custom appears to be logical, but it assumes a power in the hands of the medical man to enforce his advice to which less philosophical Westerners will hardly submit. Something, indeed, might be said for the custom which Samuel Butler described as existing in Erewhon of punishing a sick person as we punish a criminal. In many cases it is not from want of advice but from carelessness that people fall ill.

Mr. Bernard Shaw has made a trenchant attack on our ordinary custom of remunerating a medical man for the services rendered, while at the same time we leave to the same man, or one of his accomplices, the advice, and often the decision, as to what services should be rendered. He argues that to give a pecuniary interest to a medical man in the treatment to be carried out is a murderous absurdity. "What men," he says, "dare pretend to be impartial where they have a strong pecuniary interest on our side? Nobody supposes that doctors are less virtuous than judges; but a judge whose salary and reputation depended on whether the verdict was for plaintiff or defendant, prosecutor or prisoner, would be as little trusted as a general in the pay of the enemy. To offer one a doctor as a judge and then weight his decision with a bribe of a large sum of money and a virtual guarantee that if he makes a mistake it can never be proved against him, is to go wildly beyond the ascertained strain which human nature will bear." His remedy is what he calls "the municipalisation of Harley Street."

But is the case as bad as he represents it? Mr. Shaw argues logically from the premises he selects, but he overlooks other equally important. Pecuniary considerations do not, as a matter of fact, as a matter of natural history in the world around us, over-ride all others, as he assumes. That they have an influence on conduct it is not necessary to deny, but it is a blun-

der to assume that their influence is decisive. To put it on the lowest ground, honesty is usually the best policy. The greatest asset of a professional man is neither his skill nor his knowledge but his reputation for rectitude. Apart from this, each profession and, in some cases, each occupation tends to develop a special code of right conduct which prevents it preying on the community. It would be impossible for a profession or occupation to continue in existence if this was not so. Our traders do not as a rule cheat us by giving false weight as they could easily do, our domestics do not as a rule rob us of the property which is under their hands, our lawyers and our bankers are nearly always worthy of trust in spite of manifold temptation. Mutual trust is at the foundation of our social system, and while there are rogues in all classes and professions and checks are constantly necessary, we cannot base any social system on a foundation of distrust or suspicion. While, therefore, it may be, as Mr. Shaw says, that surgeons sometimes perform unnecessary operations, being tempted by pecuniary reward, the frequency of such crimes no more condemns our present medical system than occasional thefts by a parlour-maid condemn our domestic system. The decision of the proper basis of contract must rest on considerations of efficiency, and these will vary with circumstances, rather than such considerations as those to which Mr. Shaw gives most weight.
