PROFESSIONAL RESTRICTIONS IN THE PRACTICE OF MEDICINE AND THE LAW

By Dr. A. W. Burton and Mr. P. C. Trumble

Delivered at a meeting of the Medico-Legal Society held on 6th August, 1966, at 8.30 p.m., at the Australian Medical Association Hall, 426 Albert Street, East Melbourne. The Chairman of the meeting was the Medical Vice-President, Dr. G. Newman Morris.

Dr. Burton:

Tonight's subject lends itself to a dichotomy of which I propose to take every advantage. I know practically nothing about professional restrictions in the practice of law, and I am very grateful to be able to leave this side of the subject to my friend, Mr. Trumble. What I have to say will be concerned solely with Professional Restrictions in the practice of medicine.

The trouble with a topic like this is to be reasonably clear what it is one is supposed to be talking about. I imagine that the term "professional restrictions" is capable of being interpreted on the one hand as restrictions imposed on the profession itself by the law of the land, and on the other hand as restrictions imposed by the profession on its own members. Caught in this cross-fire, the individual medical practitioner today not infrequently finds himself in a remarkably vulnerable position, of which Mr. R. A. Smithers (as he then was) once had this to say during the course of an address to this Society on professional privilege:

"The doctor asks for guidance and wants to know why he should be put in such a difficult position. The answer is that he cannot have guidance and he must always remain in this difficult position. Nothing can be done for him except to comfort him with the words of Lord Birkenhead that 'the ultimate decision taken is to be in accordance with the high ethical sense of a learned and honourable profession whose aim is to raise or at least to maintain the standard of physical health in the community.' "[1]

I must respectfully agree that this is a reasonable statement of the uncertainties as to the propriety of his professional conduct with which the average doctor is so often beset.

What does the law say to him? It says in the first place that

1 *Proceedings of the Medico-Legal Society of Victoria*, Vol. VII, p. 13.

to practise medicine he must be registered by the Medical Board of Victoria. It says that his name may be removed from the register if he has been convicted of a felony or misdemeanour, or if he is an inebriate within the meaning of the Inebriates Act, or is a patient within the meaning of the Mental Health Act. All of this is fair enough but does not cover very much ground, so that the legislature in its wisdom adopted the all-embracing phrase first used in the English Medical Act of 1858, "guilty of infamous conduct in a professional respect", to include all those other varieties of misbehaviour which might conceivably justify deregistration, without of course making any attempt to define the expression. As to judicial interpretation, Scrutton L.J., who seems to have had quite a lot to say in the 1920's and 1930's on various aspects of professional behaviour without actually clarifying the position, came up with the well-known dictum that the term "infamous conduct in a professional respect" means no more than serious misconduct judged according to the rules, written or unwritten, governing the profession" *(R. v. General Medical Council).*[2] He thus interpreted the section as giving statutory sanction to the rules of professional conduct generally accepted by the profession.

What are these rules? The Medical Board of Victoria, not altogether fancying the idea of trying to apply unwritten as well as written rules to the facts of life, has produced an "Explanatory Notice to Medical Practitioners", in which are set down various types of misconduct which would be regarded as infamous in a professional respect. Most of these had been thought of by a fellow named Hippocrates who practised medicine on the island of Cos in the fifth century B.C. and who drew up a code of ethics in words which are just as clear and cogent as anything that has been produced since. The Hippocratic oath covers a pretty wide field and stresses the duty of professional secrecy. It says that the medical practitioner has an obligation to impart "precepts, lectures and other knowledge" to students without fee or reward. It says that the doctor must not be a pary to illegal acts, such as supplying "poisonous drugs" or procuring abortions. It tells him not to seduce his female patients, and it also tells him to leave surgery to the surgeons, who were then, as they still are, regarded with some suspicion by respectable physicians. All of these basic precepts are clearly in the public interest, but they have been added to over the centuries, and more particularly in

[2] 1930 1 K.B. 562 at p. 569.

recent years, by a rather odd assortment of so-called "ethical rules" which are related rather less to the welfare of the public and rather more to the interests of the individual medical practitioner, or of groups within the profession, or of the profession as a whole. These include rules relating to advertising, canvassing, covering, associating with unqualified persons, and dichotomy, all of which are regarded as coming within the definition of "infamous conduct in a professional respect". Of course, it is not suggested that there is necessarily anything wrong in protecting the interests of an individual or a professional group, provided that there is an interest to protect, and that the protection is reasonable in all the circumstances. What is suggested is that alleged ethical rules framed with this sort of protection in mind should at all times be subject to the closest possible scrutiny to see whether they are really necessary and whether they conflict with the overriding public interest.

Take, for example, the rules about advertising. These presented no problem to Hippocrates, the island of Cos being in the happy position of having no newspapers, no radio and no television. With the development of these media for disseminating misinformation far and wide throughout the community we have framed with great particularity a series of injunctions designed, in general terms, to preclude any member "engaged in active medical or surgical practice" (whatever that may mean) from addressing himself to the lay public on matters relating to diseases and their treatment, unless specific approval for him to do so is first obtained from his professional organization. Since we are for the moment going through one of our more inhibitory phases, such approval is rather more than ordinarily difficult to obtain. The lay public by and large is totally unable to see why this should be so. There has never been a greater interest in public health, in new techniques in the treatment of disease (the more spectacular the better), in the medical services of the community, their adequacy or otherwise, their cost, and the means by which they are provided; in short in all matters even remotely related to "diseases and their treatment". Every day we are assailed with requests for information on the oddest assortment of medical and para-medical topics ranging from fees to face-lifting. Whether we like it or not a great deal of what we do is news, and if we do not make it our business to see that the community is correctly informed it will certainly be misinformed from other sources. In the meanwhile we are acquiring as a

profession quite a reputation for being reactionary, unreasonably difficult and unco-operative.

Why should this be so? The question turns, does it not, on the extent to which a medical practitioner might be expected to enhance his own professional reputation to the detriment of his colleagues by appearing by name in the various publicity media, and one wonders whether in this day and age our standards of professional integrity would come to such a great deal of harm if the rules about advertising were interpreted somewhat more liberally to meet the undoubted public demand and need for better information. I think this is a problem which bothers us much more than the legal profession.

The Medical Board will take notice if a registered medical practitioner—"makes a practice 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 his professional skill, knowledge, services or qualifications, or depreciating those of others; or of associating himself with, or serving those who procure or sanction such advertising or publication".

I rather like this definition because it places the emphasis on intent, and I submit that in grafting on to this sort of basic proposition a detailed listing of possible ethical infractions we are being more restrictive than we really need to be. I suppose there is something to be said for the premise that a reputable profession does not advertise, but it is also true that for some years past we have been subject to a series of vacillations and uncertainties about the application of our present rules, and if we cannot make up our minds with reasonable clarity what it is we are trying to do with these rules, then it is no wonder that the public, the publicity media, and our members for that matter, think we are being just a little bit silly.

I have taken the rules about advertising as an example of a professional restriction which has developed over the years and which may well have been in the public interest in times past. Whether this is still so is a matter of opinion, and I suggest that times have changed sufficiently to warrant having another good look at these rules. There are other professional restrictions of course to which the same applies, but I cannot deal with them all in the time available to me. All I can do is to wonder whether

in this day and age all of these rules are really necessary to maintain proper professional standards.

How are professional restrictions on medical practitioners enforced? They are enforced on the one hand by the Medical Board of Victoria and on the other by the Ethics Sub-committee of the Victorian Branch of the A.M.A. The Medical Board is armed with statutory powers and it may reprimand, suspend from registration, or deregister an offending medical practitioner. The Ethics Sub-committee is concerned with breaches of the ethical rules of the A.M.A., covering a much wider area than that within which the Board operates, and it is able to deal with these breaches more flexibly, more informally and more expeditiously than can the Board. It can only act against members of the A.M.A., and it may recommend to the Branch Council that a member be censured or that he be expelled from membership of the Association. If such action is taken it is presumably detrimental to the professional reputation of the member concerned, and he may be able to prove damage. The question then arises whether the member (or ex-member) has any redress at law against the decision of a body acting in good faith to enforce the rules by which he undertook to be bound on joining the Association. This question has been raised more than once and it may be one on which a member of the legal profession might care to comment.

I know nothing of restrictive trade practices legislation but I imagine that price fixing within a professional or trade group would come within its ambit. We say that there are no fixed fees in medical practice and that the doctor should charge the fair value of the service rendered. We do in fact make recommendations to our general practitioner members from time to time relating to the fees which should be charged not only for surgery consultations and home visits, but for quite a wide range of special procedures normally carried out by general practitioners. In these matters the A.M.A. can only recommend. It has no direct powers of compulsion, and in any case it is made clear that the fees suggested are intended only as a guide to what should be charged. In practice whatever we recommend becomes public property the day after it is sent out to our members carefully labelled "Private and Confidential", or even the day before. It makes newspaper headlines, it engages the attention and sometimes arouses the acrimony of various Government departments and other organizations with which for better or for worse we

have to deal, and the end result is that "fees recommended by the A.M.A." are interpreted as "fees laid down by the A.M.A.", so that the patient who is charged, usually for a perfectly good reason, a fee which is higher than the one he read about in the newspapers the day before is wont to complain. It is highly unusual to have to entertain a complaint from a patient who was charged less than the normal fee, and these are many. In these circumstances all we can do is to say to our members that we will not defend the charging of a fee which is grossly in excess of what in all the circumstances would seem to be reasonable for the service rendered, and this works out moderately well in practice. A few would contend that this is an unreasonable restriction on private enterprise.

So far I have been dealing in the main with restrictions on the individual in the practice of his profession, and if I have been flitting rather erratically from flower to flower I can only plead that I am finding the subject with which Mr. Trumble and I have been saddled rather more than ordinarily difficult to pin down and dissect. I turn now to consider restrictions which are imposed firstly by groups within the medical profession, and secondly by the profession as a whole, on competing interests. This of course involves considering whether monopolies exist, and if so whether they can be justified.

We suffer from an increasing tendency for various groups within the medical profession to form themselves into Colleges. Not so long ago there were only the three Royal Colleges, of Physicians, of Surgeons, and of Obstetricians and Gynaecologists. In comparatively recent years we have seen the development of a College of General Practitioners, a College of Radiologists, a Faculty of Anaethetists, a College of Pathologists and a College of Psychiatrists, while a College of Dermatologists and a College of Medical Administrators are in the process of gestation. A gathering of the profession in academic dress is bedecked these days in all the colours of the rainbow, with nobody very sure what they all signify. As medical graduates sort themselves into the respective compartments thus created there is a tendency for each group to claim for itself exclusive rights to practise its own particular mystery, and the result is that the general practitioner, the alleged "backbone of the profession", is fast being shorn of his skills and reduced to the status of a referring doctor. While unfailing lip service is paid by all concerned to the essential role of the family doctor in the medical services of the community,

the fact of the matter is that he is gradually being squeezed out of practice. Now for the first time in history he forms a minority of the profession, and new graduates are turning more and more towards the specialties. Much of this is inevitable with the rapid development of medical knowledge and the need for specialties within specialties to be created, but the general practitioners themselves have contributed to the trend: some have been only too willing to divest themselves of responsibilities which they have been trained to accept, while some have gone to the other extreme and have undertaken advanced technical procedures beyond their capabilities. The problem is a complex one, but with increasing specialization the average citizen more than ever before needs his family doctor to take charge of his total medical care. The public interest requires that specialist groups give the general practitioner every possible help to provide this service. There is no place here for any restrictive practices which limit his utility.

What of the medical profession as a whole? It stands in a very privileged position. The provisions of the Medical Act have the effect of conferring on registered medical practitioners a monopoly which is now being attacked from two different directions. It is being attacked by various segments of the public, who are becoming increasingly irritated by the continuing shortage of medical manpower in the community and the consequent inadequacies of the services provided, especially in country areas. The public tends to harbour the dark suspicion that this is all the work of the doctors' "trade union", intent on limiting competition on the one hand by maintaining the quotas imposed by the medical schools and on the other hand by preventing large numbers of clever foreign doctors from coming to practise in this country. The quota issue is a subject in itself: for the moment it is sufficient to say that ever since 1954 the A.M.A. has been urging the government by every means in its power to provide the facilities to lift the output of medical graduates so that a very real community need may be filled. As regards the import of doctors from overseas, it is generally overlooked that the doctor shortage is now a world-wide problem and that, apart from United Kingdom graduates, there is no great tendency for medical practitioners to flock to these shores: they are doing perfectly well where they are. The Medical Act provides for reciprocal registration of graduates from most of the Commonwealth countries, with the notable exception of Canada, and says

that graduates of other overseas medical schools may be registered provided that they have "an adequate understanding and command of the English language", provided that they are of good character, provided that they have been resident in Victoria for a minimum period of three months, and provided that they pass an examination. The examination is conducted by a body termed the Foreign Practitioners Qualification Committee, and is an essentially practical type of examination which any competent general practitioner should be able to pass with the greatest of ease. Since the Committee was established in 1957, 85 foreign doctors have been examined and of these 62 have passed the examination. There is provision also for overseas graduates with exceptional skills to be admitted to the register without examination. These requirements seem not unreasonable, in fact they are minimal if we are to preserve the present high standards of medical practice in this country, and this is the price of having a monopoly—a continuing obligation to maintain the standard of service to the community for which that monopoly was created in the first place.

The second attack on the monopoly comes from those who seek recognition by the State that they are capable of treating disease although they hold no medical qualifications at all. This is an age-old problem of the medical profession. These people come and go, depending on how long they can fool a sufficiently large portion of the public to show a profit. The last to go were the scientologists. Today we have chiropractors, osteopaths, naturopaths, hypnotherapists, faith healers of all kinds, herbalists, and so on, and the most troublesome of these are the chiropractors, who have come quite a long way on a dogmatic concept of the cause of disease which is nonsense, a system of treatment which is pure humbug, and some very shrewd salesmanship. The trick in promoting any of these cults is to invest them with sufficient pseudo-scientific claptrap to mislead the unwary into believing that they will receive the benefit of some well-spring of knowledge not so far revealed to orthodox medicine. Scientology did this rather well. As regards chiropractors, they have recently achieved registration in Western Australia and are pressing very hard to be registered in Victoria. The general attitude of medical practitioners to these cults is to ignore them and to hope they will go away, but it is contended that some more positive approach is called for if we are to justify the confidence which

the law has so far placed in us as custodians of the health of the community.

In this address I have tried to deal with only a few of many possible aspects of the subject we have been given, and I have of course confined my remarks to the practice of medicine. There is no possible doubt that an increasingly well-informed and intelligent public is displaying an evergrowing and critical interest in the nature and quality of its medical services. If we are to preserve those professional restrictions which seem to us to be worth while preserving, we should be prepared to modify or discard others which have outlived their purpose and are no longer consistent with the public interest. We as a profession are in the fortunate position of having been given by the State a monopoly to practise medicine, and it is submitted that this monopoly will continue for as long, and only for as long, as we use it to the benefit of the community and not solely to protect ourselves from the winds of change.

MR. TRUMBLE: First of all, I make it quite clear that I do not intend discussing the recent Commonwealth legislation with respect to Restrictive Trade Practices. There is one very good reason for not doing so. It would be offensive to you, Mr. Chairman, and equally distinguished members of the medical and legal professions, to suggest or even hint that any of our respective professional practices could conceivably be regulated by legislation with respect to trade. Even if this may not be quite true when we face the harsh realities of legislation which will be no respecter of gentlemen, I think an address to the members of this Society on the provisions of that legislation would be boringly dull to the doctors present and embarrassing to the lawyers, not the least to me. But passing reference to that legislation does enable me to move into the first aspect of this discussion which occurs to me from the title of the subject and on which Dr. Burton has already spoken—that is, the restriction on persons, other than doctors and lawyers, to practise the professions of Medicine and Law.

The trade practice legislation exposes to public examination and enquiry a variety of commercial relationships; and, in particular, enquiries as to the existence of monopolies; and if it is found that a monopoly exists, enquiries as to whether it is in the interests of the community that the monopoly should be allowed to continue. I think it is fair to say that the members of both our professions need have no fear in the immediate future that

the trade practice legislation will cause the qualifying criteria which at present control the admission of persons to practise within those professions to be disturbed. But it is interesting to examine the fundamental bases on which the medical and legal professions justify their present privileged position over unqualified persons who seek to practise the professions of Medicine and Law.

"Anyone who has ever known doctors well enough to hear medical shop talked without reserve knows that they are full of stories about each other's blunders and errors and that the theory of their omniscience and omnipotence no more holds good among themselves than it did with Molière and Napoleon. But for this very reason, no doctor dare accuse another of malpractice. He is not sure enough of his own opinion to ruin another man by it. The effect of this state of things is to make the medical profession a conspiracy to hide its own shortcomings. No doubt, the same may be said of all professions." I hasten to say that those words are not mine but those of George Bernard Shaw, who was not generally thought to be a supporter of the medical profession. He laid the same charges against what he called the legal conspiracy as well. Now, there is a grain of truth in those thoughts. It is not my theme that doctors and lawyers procured a legislative monopoly so that they might practise their professions with gay abandon for the health and security of those who sought their services. On the contrary, it was those who despised the quack and the shyster who moved for legislation to exclude them from the right to practise.

The fundamental reason why the professions claimed their monopoly was so that they could discharge their professional responsibilities without fear of competition from unqualified practitioners. And the price which society expected for this privilege was, as Dr. Burton has already said, an assurance by the members of each profession that they would provide the best possible advice and service within existing knowledge and that they would collectively see that this was achieved by disciplinary action in relation to professional qualification, disruptive competition and dishonourable behaviour. But I think we are inclined to rely on honour, integrity and the chivalrous brotherhood of a learned profession to protect our privileged right to practise and forget that the restrictions which support our professional privileges offer no lasting security.

Our professions have both emerged from the inheritance of

highly technical knowledge and procedures which were guarded and exploited with jealous enthusiasm for their own self-interest by those who practised them. The development of that knowledge and procedure quickly made both professions indispensable to society. It is generally conceded, I think, that in the early days of both law and medicine the practitioner in those professions took an unfair advantage of their monopolistic skill and knowledge. For example, it is not only today that the lawyer is criticized. In 1455 a Statute was passed to limit the number of Attorneys in East Anglia on the ground that "they fomented litigation more by evil will and malice than the truth of the thing". For hundreds of years barristers maintained a vested interest in suits which dragged on for years and there was evidence in the profession that they did not give the best possible advice to the client not competent to criticize it. As a consequence of this kind of self-interest, professional monopolies retreated before pressures of secession within and challenge from without.

These processes led to a decline in the respect for and influence of the Inns of Court and the embarrassing growth in the prestige of solicitors and later on to the loss of large areas of practice to accountants, to tax consultants, to patent attorneys, to investment and trustee companies, to lay advocates, to insurance loss assessors, to debt collection agencies and, in some parts of Australia, to land agents.

The medical profession has faced the pressures of secession and challenge also. I have never been quite sure whether surgeons broke away from or broke into the profession, but whatever it was they seem to have had a struggle to aspire to respectability. Nor am I sure whether it was social ostracism which caused barbers to break away from surgeons and practise teeth pulling. No-one can deny that the dentist who succeeded the barber had had plenty of practice—indeed, I sometimes think mine regards me as a kind of practice bunker. Since then the medical profession has lost or is losing the challenge from pharmaceutical chemists, chiropractors, psychologists, physiotherapists, opticians, radiologists, chiropodists, and all the others Dr. Burton referred to before.

This kind of secession and challenge shows up the disappearing mystery of both our professions. The areas of practice which have been lost in both professions have been lost through indifference, failure to provide the service at a reasonable charge,

and failure to provide them efficiently in the face of an increasingly intelligent and cost-conscious laity.

We in the legal profession are in a dilemma over this problem because universal education and greater tertiary educational emphasis on law in commerce, banking, insurance and similar fields is tending to lift the veil from the secrets of our professional techniques and legislation is continually attempting to simplify procedures. These processes are exposing us to greater pressures to permit the entry of lay practitioners. On the other hand, the profession fears that the increasing influence of lay practitioners will result in the community being led into practices and procedures and indeed to laws which do not recognize many of the fundamental principles of justice which are interwoven into the social system both through legislation and through the common law.

There is another factor in this aspect of the problem and that is that at the present moment both our professions are practised under the shield of a statutory monopoly on the basis of domestic independence. The members of both professions are free to develop their practices on an independent basis, subject of course to the restrictions imposed by the profession on its members, to which I will make reference later. This means that as a group the profession has a monopoly in the widest sense. But I draw attention to the problems which face the professions in this connection and which call for an examination of whether the monopoly is justified on that basis. I have no doubt all members of this Society have read Shaw's Preface to his play entitled *Doctor's Dilemma.* His theme was the conflict of interest between the doctor's professional duty to cure the patient on the one hand and the doctor's alleged professional desire to do so by means of some pharmaceutical or surgical treatment which would ensure the physician or surgeon the most profitable means of achieving this result. Shaw was a great man for overstating the problem, but I suppose there were many of his contemporaries who shared his feelings and the modern community has become more sceptical of the services performed for them by the learned professions. Perhaps it learns too much for its own good from *Time, Life* and *The Reader's Digest,* and publications of that nature. Once upon a time, to quote Shaw—"Every captain of a trading schooner was a Galileo, every organ grinder a Beethoven, every Old Bailey barrister a Solon, every scrivener a Shakespeare", and so on. The public is no longer ready to accept the miraculous

prescription with humble faith. Similarly, the lawyer's client is no longer prepared to accept the lawyer's explanation for the heavy costs of legal processing and litigation and the delays in completing the service for which he was instructed. Because of these trends both professions face the risk of nationalization.

I do no more than raise the spectre of nationalization. I think the intelligent Government recognizes that the medical and legal professions must, if possible, have complete independence but an independence involving an inner integrity on the part of each practitioner, namely, the giving of a service which, because it cannot be precisely prescribed or examined in advance, requires a relationship of trust between the practitioner and client, or the patient and the doctor. But if those professions cannot themselves achieve the best possible service if necessary by the abolition of old and inefficient and costly practices, then the public will take it over themselves, whether this is the right thing or the wrong thing in the long run.

The restrictions imposed by the profession on the practitioner himself in the practice of medicine and law fall into two broad categories. In the first place there are those restrictions which every practitioner must accept as the price for practising within the privileged area of professional monopoly, such as professional ethics, control of fee fixing, touting, etc. In the second place there are the restrictions which protect the specialist group of practitioners against the general practitioners in the profession.

Dealing with the latter group first there is a very obvious example of this in the legal profession—and that is the Bar as distinct from the so-called solicitors' side of the profession. In Victoria, all persons admitted to practise in the legal profession are admitted to practise as both barristers and solicitors and this is provided for by statute. Nevertheless, despite the passing of this legislation, almost every practitioner who has chosen to practise at the Bar voluntarily undertakes by signing the Roll of Counsel kept by the Victorian Bar Council to restrict his right of practice as a lawyer to accepting briefs to appear in Court from solicitors and no-one else, to give opinions, to draw and settle pleadings and to observe the various rules of the Bar which regulate the manner in which Counsel will carry on business as a barrister. There is no law to prevent any person who has not signed the Roll of Counsel but who has been admitted to practise as a barrister and solicitor from appearing in Court provided that he observes the rules of court with respect to formalities,

appearances, etc., and there are one or two who do appear in this way. However, they would have to cease to practise as solicitors if they signed the Roll of Counsel. It is difficult to describe the peculiar sanction which membership of the Victorian Bar imposes on its members to observe the various Bar rules, and even more difficult to point to any sanction against solicitors entering this field of practice without signing the Bar Roll.

There is as I suggested earlier a great deal to be said for the system in the interest of the community and there is much to be said for it from the point of view of both solicitors and barristers. The most important feature is that the barrister is retained by the solicitor—not by the client. He may appear for a client one day and against him the next. Whilst he is briefed for the client he gives him loyal and unbiased service but he is not tied by any other bond except that brief. This leads to an independent and unbiased judiciary which those of us who practise under this system believe cannot be achieved so smoothly in other States where there is no separate Bar. A separate Bar provides the solicitor who has a small litigation practice an avenue to skilled and experienced trial lawyers of every kind. It provides the large firm with an avenue to specialist trial advocates and to specialist opinion counsel. And for the lawyer who is interested in litigation work it provides a career in a specialized branch of litigation work suited to his abilities and preference. And of course it provides a means for a greater degree of skill and experience in each specialized branch of work at the Bar.

I would like to have spent more time on the question of specialization in the wider sense. This raises issues (perhaps more so in the medical profession) which are becoming more acute. The medical profession has already reached the stage where there are accepted criteria for professional recognition of specialists within the profession such as membership of various Medical Colleges. (Dr. Burton has already referred to these.) The profession recognizes the right of persons so qualified to hold themselves out as being qualified in a particular branch of the profession and those who are not so qualified are correspondingly restricted. Apart from the distinction between the barrister and the solicitor, we in the legal profession have not moved that far. There is no Association of Life Insurance Counsel or National Association of Claimants Counsel as there is in the United States. But I do not believe even in the United States, whether in medicine or law, that specialization has reached the stage where

the specialist is restricted from practising outside his own specialty nor the stage where, being a specialist, he is required to submit to a process of continuing qualification as an assurance that he maintains standards in the face of developing procedures and techniques. But there are already pressures in these directions in the United States.

In an address on the "Professional Mind" delivered before the Royal Medico-Psychological Association in 1934, Lord McMillan said: "The attainment of a highly specialized knowledge of one isolated subject tends to create a certain arrogance of assurance. It is not unnatural to assume that if you know more about a subject than anyone else you know it better than any one else. But is that necessarily so? It might be so if human life and human knowledge were divided up into watertight compartments and it were possible to deal with each compartment by itself. But we cannot isolate any one factor in the social organism. The interrelations of the parts with each other and with the whole are infinitely complex. The result is that the conclusions of the specialist, however convincing they may seem to him within his own sphere, have often to be corrected and modified when brought into relation with wider consideration."

Surely these words are right. Specialization by non-qualified practitioners and its shortcomings in the public interest should be a warning against a fragmentation of the profession from the top.

The remaining restrictions on the practice of medicine and law to which I wish to refer are those which every practitioner accepts upon admission to practise his profession.

They may be summarized as follows:

1. Loyalty to his clients and their affairs, his profession and his professional colleagues.
2. Duty to maintain the highest professional standards whether to his client or the public.
3. Duty to accept personal responsibility for work performed by practitioners or their staff.
4. Duty to avoid any conflict of his own interest with that of his client.
5. Duty to refuse to profit from his service except to the extent of a professional fee.
6. Duty to avoid unfair prominence by touting, advertising, and practices of that nature.

All of these topics are a fruitful source of debate as to where

the definitive line of demarcation should be drawn but generally speaking there is really no doubt about their justification. There are two, however, which are or may be challengeable.

The question of limiting the liability of practitioners is a restriction which for some time has been of incidental interest arising out of problems associated with income tax. However, the growing practice of group practices in the profession of medicine and the growing numbers of partners in solicitors' firms is beginning to focus attention on the subject from a different viewpoint. The complexity and volume of work is forcing both professions into the world of partnership and because of the necessary development of specialists within the group the individual partners in the group become less and less familiar with the work of each other and exercise no control and supervision over their colleagues' work. Consequently the partners in such groups are concerned that they may become liable for substantial amounts through the negligence or dishonesty of their partners. The question arises whether incorporation with a limitation of liability is acceptable in the interest of the public. I do not think any one begrudges the innocent partner his protection these days because, so far as both professions are concerned, most of the risks are covered by insurance or indemnity funds. I think the reluctance of the professions to countenance the idea is that it may appear to the public that the practitioner is no longer prepared to have confidence in his own ability and if protected would not care much about it any way and, consequently, standards will fall and the professional monopoly and independence will be in jeopardy.

The only other restriction within the profession to which I wish to refer is the common injunction against advertising. I suppose the basis of this is that if you have a client or patient-practitioner relationship in our professions in circumstances where the patient or client is completely unable to judge the quality of the practitioner's work, it is proper to assume that they all provide services at the highest level and leave the public to choose their practitioner on other criteria. Otherwise the practitioner with large financial resources will procure patients or clients by statements the correctness of which the patient or client is unable to judge and intensive advertising will make competition so fierce that standards of other practitioners will fall. The question of advertising is not easy. There are many areas in the legal profession where advertising for the public

would be of real value. For example, many clients would find it helpful to know the names of practitioners who practise in specialized fields, or who claim for one reason or another to have higher qualifications in their fields. Similarly, solicitors would find it helpful to know the specialized claims of barristers and of medical practitioners and indeed of other solicitors. Again, solicitors would find it helpful to be able to advertise to the public the fact that they perform work such as consulting in the field of accountancy taxation, patents and trade marks practices, and so on, and other practices which have seceded from their general practices over the years.

Arnold Bennett, speaking of law, once said: "I come of a family of lawyers and I consider their two great trade unions (i.e., the Bar and the Law Society) the most vicious opponents of social progress in Britain today." When you couple those views with those of George Bernard Shaw as to medicine and when you consider that these men were great social commentators of their day, it is not surprising that our professions are being critically scrutinized by an increasingly intelligent laity. The learned professions are bound together in a common discipline which creates a spirit of scholarship and public service. The professional practitioner does not deal at arm's length with his patient or client; the business principle of *caveat emptor* cannot apply where experts sell their services to laymen. Professional codes recognize duties to the cause of learning and to clients or patients and to the public. But these restrictions will not protect our professions against the erosion of specialization, whether by unqualified or qualified practitioners, unless the professions meet the challenge of society against the cultural trappings and mystery of the cultural profession.