TALKING POINT

The Medical Act 1978: Passage through Parliament*

LORD HUNT OF FAWLEY

Sir Alec Merrison's researches into the 1858 Medical Act showed that 16 abortive Bills had been produced over 20 years before that Act reached the Statute Book.¹ The story of the 1978 Act, which replaces it, is unusual and in some ways unique. It took only 25 weeks to pass through Parliament and during that time it increased greatly in size. I followed its stormy passage from the Opposition back benches of the Upper House. The salient points are picked from 380 columns of *Hansard*, and from several private discussions with members of the Government and Opposition front benches which have not yet been recorded.

The 13 turbulent years which preceded this Act started in 1965 when the General Medical Council proposed an annual retention fee in addition to the registration fee payable on qualification, and when members of the medical profession were questioning the structure and functions of the GMC. During the next few years the British Medical Association played a leading part in the debates, with Sir Ronald Gibson and Dr Derek Stevenson, Dr John Marks, Dr John Happel, Dr James Appleyard, and Dr Tony Dickens playing important parts. The Chief Medical Officer, Sir George Godber, set up a working party under Sir Brynmor Jones to examine the composition of the GMC, and Sir Ronald Tunbridge chaired another working party to consider its functions. Some doctors withheld payment of the annual retention fee, and the GMC threatened to remove their names from the Medical Register. Pressure built up for a public inquiry into the GMC.²

On 23 November 1972 Sir Keith Joseph, then Secretary of State for Social Services,

*Based on a speech at a GMC dinner on 24 May 1978.

announced an independent Committee of Inquiry into the Regulation of the Medical Profession. This committee first met in March 1973 with Alec Merrison as chairman. Its report in 1975 was comprehensive and unanimous.³ The profession as a whole accepted it gratefully. All but three of its 95 recommendations were in line with BMA policy. The Government took two and a half years to consider the report and then suggested

Lord Hunt of Fawley

a short Bill which was good so far as it went. This dealt mainly with a reconstruction of the GMC and a change in its size with, for the first time, a majority of practising doctors, and the appointment of a health committee. It left unimplemented all the Merrison Committee's important suggestions on education and registration, on overseas-qualified doctors, and on high standards of professional conduct. That short Bill was introduced by the Labour Government in the House of Lords on 10 November 1977. It was non-party and comparatively non-controversial. There was a good chance that it would be passed easily in the small amount of Parliamentary time which was allotted to it.

The Secretary of the BMA, Dr Elston Grey-Turner, asked me to help when the Bill was to be discussed at the second reading on 29 November. In that debate surprise was expressed at the Government's hesitancy and timidity in not putting more of Merrison's proposals into the Bill. But when introducing it, as the Government's spokesman, Lord Wells-Pestell said, "It has not been possible to include provisions in the present Bill to enact any of the other Merrison recommendations."⁴ He promised a second Bill—no one knew when—to fill in the gaps. The fear of losing the Bill altogether, because of shortage of time, was fairly general. The BMA Secretary wrote to me on 5 December saying, "While we hope that efforts will be made to enlarge the scope of the Bill . . . we

should be profoundly dismayed to see the Bill run into time difficulties." Sir John Richardson, President of the GMC, told me that he thought it would need a miracle to introduce more of Merrison into the Bill. He said that if I put forward amendments which would lead to its being lost altogether, through lack of time, I would be "the most unpopular doctor in Britain."

The registrar of the GMC, Mr Martin Draper, and I approached the Clerk of the Parliaments, Sir Peter Henderson, who told us that it was procedurally possible for me to table the amendments for the committee stage of the Bill which I had in mind. We hoped that we might be able to introduce enough additions to eliminate the need for a second Bill later; I told the House that I would like to do this. Many noble Lords took part in the debate, as indeed they did at every stage. The Government were not at all pleased. Lord Wells-Pestell said, "Some of your Lordships frighten me. I am really concerned at the suggestion that the Bill should be enlarged."⁵ He referred to me as having been "rather vehement" about this. He begged us to "think not twice but three times" before putting down amendments.⁶ After the second reading I received encouragement from many sources—the GMC, BMA, some of the royal colleges and universities, from the director of the British Postgraduate Medical Federation of the University of London, and from the executive of the Overseas Doctors' Association. I am grateful to them all and would like to thank them. A letter from Sir Alec Merrison said that he thought it was an "extraordinarily feeble Bill" as it stood, and he hoped that I would persist in my endeavours to enlarge it.

During the next few weeks I had a great deal of help from the GMC (particularly from Sir John Richardson, Mr Draper, and Miss Wendy Cogger), and also from the BMA (especially Dr Grey-Turner, Dr Marks, Dr Happel, and Miss Doreen Warner). Several letters were exchanged between the GMC, the BMA, and the Department of Health and Social Security. Despite what Lord Wells-Pestell had said, we enlarged the number and scope of my amendments which were printed in the marshalled list for the committee stage. During personal discussions with Lord Wells-Pestell it soon became clear to us both that in the long term there was no great measure of disagreement between us on principles, and that he was prepared to make an effort to meet my suggestions. The only real difference was that he wanted two Bills and I wanted one. We were both concerned about the time factor. He was genuinely afraid that any amendments would be controversial and would delay the passage of the Bill, which might be lost altogether through lack of Parliamentary time, a snap general election, or difficulty in getting members of the medical profession to agree. Lord Winstanley said, "You have only

From the Secretary—continued

company, which owns property and publishing businesses, administers research and charitable funds, and organises national and international conferences. This is quite apart from its vital function as principal negotiating body and mouthpiece of the medical profession on political questions and on medicosocial and scientific matters.

A member wrote to me recently, "I feel I am one with the great majority of doctors who owe the BMA a big debt of thanks for all you have done for us professionally—and in my own case personally, on several occasions." This is encouraging. It is not, however, just what this doctor gets out of the BMA that matters: equally important is what he, as a member, has put into it. The strength of a chain is the strength of its weakest link, and every non-member weakens the pull that the BMA can exert on behalf of the medical profession.

to leave three doctors together for five minutes for them to arrive at a situation of total disagreement about almost anything."⁷

Important amendments

At the committee stage, on the floor of the Upper House on 13 December, I put forward my first three amendments. They were what Alec Merrison and (on medical education) Lord Todd⁸ before him had suggested. Our profession owes them both an enormous debt. In short, these proposed amendments were:

(1) It would be a function of the new GMC to give guidance to the medical profession on all matters relating to doctors' ethical conduct and behaviour. At a later stage (in Standing Committee D in the House of Commons) the word "guidance" was changed to "advice," which I am sure was right. When I had been sent to Russia by the editor of the *Sunday Times*, 18 years ago, to study general practice in that country and to write three articles for that paper's magazine section, I asked the GMC whether I should put my name and degrees and diplomas at the top of these articles, or whether I should even say that I was a doctor, for fear of being accused of advertising. The answer I received was that because of their judicial position in relation to professional conduct the GMC could not help me as it was not their custom to give advice of that sort. If anyone complained afterwards, however, I could be charged with professional misconduct. In the end I followed what Lord Cohen of Birkenhead had done in an article he had written for a daily paper shortly before, and there was no subsequent trouble. At the time, this refusal by the GMC to give me advice or guidance on such a simple matter seemed ridiculous. I was glad to have an opportunity to try to change that policy in this amendment.

(2) It would be the general function of the Education Committee of the GMC to promote high standards of medical education, to co-ordinate all stages of medical education, and to determine standards required for qualifying.

(3) The GMC should determine the nature and quality of the preregistration experience required for full registration; and licensing bodies should have increased powers to steer their graduates into a suitable combination of posts.

When I had moved these first three amendments Lord Wells-Pestell generously suggested that, if I withdrew them, he would ask Parliamentary Counsel to reword them with the same spirit and meaning, so that I could present them again at the report stage. They were long amendments. Parliamentary Counsel did a wonderful job on them with great skill at short notice and I was grateful to them.

But even then it was by no means plain sailing. At the end of the committee stage Lord Wells-Pestell objected strongly to my other three amendments: the requirements concerning linguistic knowledge of overseas-qualified doctors, their limited registration, and their progress from limited to full registration. Those were matters, he said, "which the Government cannot contemplate including in this Bill," and therefore "no useful purpose would be served in proceeding with them."⁹ I realised that the Government, at that time, was adamant about this, for legal

and other reasons which I could not discover. Lord Wells-Pestell described some of them to me, in a letter on 5 January 1978, as "serious policy issues which must be for Ministers to consider." So I withdrew these amendments without debate; but I gave notice that I would try to introduce them again at the report stage.¹⁰

My good relations with Lord Wells-Pestell nearly foundered about that time, when he accused me of telephoning the Leader of the House behind his back to enlist support for these amendments about overseas doctors. I denied that I had ever spoken on the telephone to the Leader of the House, but was told that the conversation had been confirmed by the Leader himself and that it had been very much "out of order." I was quite bewildered by all this, until three days later I remembered that I had rung Lord Pitt of Hampstead—a doctor from the West Indies. The telephone operator must have put me through by mistake to Lord Peart, Leader of the House, with whom I had an odd conversation, thinking all the time that I was speaking to David Pitt. When I explained what had happened Lord Wells-Pestell said he was greatly relieved, and Lord Peart told me that the same mistake had been made before.

Time was by now running on. I had more friendly talks with Lord Wells-Pestell and his advisers—one of these meetings was at the DHSS, which they would not allow Mr Draper to attend for a reason we never discovered. I explained how much outside pressure there was to include the needs of overseas-qualified doctors in the Bill. I showed them an article with banner headlines about those needs, by a Parliamentary correspondent of a medical newspaper, which suggested that the feeling on the back benches of both sides in the House of Commons was so strong that the Government might possibly be defeated on this issue when the Bill reached that House.¹¹

At the next stage—the report stage on 24 January—I introduced once again my three amendments about overseas-qualified doctors.

(1) When discussing language requirements I said that control of these was most urgent because some patients were having a bad time.¹² Our patients should have priority, and yet they had been mentioned only once in the two and a quarter hour debate at the

committee stage. A language barrier was frustrating to both patients and doctors. Many ill patients were suffering because they would not go to doctors whom they could not understand and who they knew could not understand them. I said that we did not wish to discriminate against any particular country; but we were anxious to ensure the same language requirements for all.

(2) The second amendment referred to limited registration of overseas-qualified doctors.

(3) The third amendment was concerned with progress from limited to full registration, for which the Merrison Committee had emphasised the importance not only of proficiency in English but also in professional knowledge, competence, and experience.

In the debate at the report stage, Lord Wells-Pestell was more amenable than he had been in committee. He agreed with the principles behind these further amendments; and he was good enough to suggest, once again, that if I withdrew them he would ask Parliamentary Counsel to rewrite them so that they could be included in the Bill when it went to the Commons. This was done. Time had become really short by now. He told me that only one hour before the debate on the report stage was due to begin he had obtained agreement to this course from his ministerial colleagues in the DHSS. At the end of the report stage the last of my 23 amendments (several of them consequential) were agreed, and it was clear that the Bill would be sent on to the Commons in just the form we wanted.

During the debate at the third reading of the Bill in the Lords on 2 February Lord Wells-Pestell said from the Government front bench, "So much has been accomplished in so little time, because three months ago it seemed quite inconceivable that we should be able to get such substantial agreement as was ultimately achieved. So far as I personally am concerned," he continued, "there has been no other occasion since I have been a Member of your Lordships' House, so far as I can remember, when the Opposition have got everything they asked for—it is the very first time."¹³ What he did *not* say, however, and what I would like to emphasise now, was the important part he had played—with his willingness and sustained effort to meet us and help us by informal discussions, with

NHS structural changes

The secretary of the staff side of the General Whitley Council has issued the following list of proposals for structural change in NHS authorities.

Liverpool AHA(T): The single-district structure was implemented on 1 May 1978.

Sheffield AHA(T): The two-district structure was implemented on 1 August 1978.

Avon AHA(T): The Secretary of State has approved the management structures for the enlarged districts and the merger of Bristol (T) and Weston districts will take effect from 1 October 1978.

Gloucestershire AHA: A final submission was received from the South-western AHA on 12 July seeking the Secretary of State's approval of a single-district structure.

Wakefield AHA: Proposals to form a single-

district area in Wakefield are being formulated. These have not yet been submitted to Yorkshire RHA.

Derbyshire AHA: In April Derbyshire AHA set up an officer working party to study the feasibility of possible changes to the AHA's management structures.

Somerset AHA: A document, *Review of Management Arrangements*, was considered by the South-western RHA at its meeting on 10 July. This decided that further consideration should be given to this matter by the region's Manpower Working Party.

Lambeth, Southwark, and Lewisham AHA (T): The Secretary of State has called for a report by the end of the year on whether changes in the structure and organisation of the AHA would be beneficial.

understanding, patience, and friendliness. Lord Sandys on the Opposition front bench also played an essential part. He quoted Lord Butler of Saffron Walden, who said on one occasion, "If the spirit is right, everything else will follow."¹⁴ That is what happened when this Bill went through the House of Lords. The spirit *was* right.

Goodwill in the Commons

When it reached the House of Commons that good feeling was maintained. Dr Gerard Vaughan said that it arrived there with "an almost suspicious amount of approval from everyone concerned." In that House it was thoroughly examined and usefully amended, through divisions, at two meetings of Standing

Committee D under the masterly leadership of Mr Roland Moyle, Minister of State for Health. I attended those meetings as a visitor (just as several members of the GMC and the BMA had attended the Upper House when he was judging a long-drawn-out patent struck me as remarkable that Roland Moyle, who is not a doctor, could have grasped so quickly and thoroughly the professional intricacies of an extremely complicated Bill like this. I was reminded of what Lord Justice Luxmoore told me many years ago when he was judging a long drawn-out patent case involving gyroscopes. Towards the end of it he said that he thought he knew as much about gyroscopes as anyone in England. Roland Moyle must know more about this Medical Bill than 99% of doctors in this country. I congratulate him and thank him,

for we owe him a great debt, as we do many others who helped this Bill so quickly through the House of Commons, in a second reading committee, in Standing Committee D, and on the floor of that House on 20 April.

The Bill was returned from the Commons to the Lords, where on 5 May 98 Commons' amendments were considered—some of which were mine (about overseas-qualified doctors) redrafted by Parliamentary Counsel. Others were good new amendments suggested by Standing Committee D (such as the introduction of a language test for full registration and provision of limited registration of overseas-qualified doctors before the rest of the Act became operative, the right of any doctor to appear before the Preliminary Proceedings Committee if threatened with interim suspension, and the abolition of reciprocity); and many were consequential. All of them were agreed.

Thus the Bill had passed through both Houses of Parliament with all the Merrison Committee's most important proposals incorporated in it. Within about an hour we heard that it had received the Royal Assent. I telephoned Sir Alec Merrison to tell him the good news that this Act would soon be on the Statute Book.¹⁶ He was delighted. I hope that it will also be welcomed by most doctors in Britain who have qualified here or overseas, and that this legislation will provide a sound basis for the regulation of our profession for many years to come. The General Medical Council has much thinking and hard work ahead to make the Act work satisfactorily. There are things to be elaborated, which can be done in subordinate legislation by Orders in Council.

In some ways this Bill has been a good example of the value of an Upper House. It was introduced by the Government in the House of Lords, and carefully debated and greatly enlarged there. With Parliamentary time so limited in the House of Commons the Bill took up only 80 minutes on the floor of that House. Even more remarkable, perhaps, was the fact that throughout its passage through Parliament there was not one division about it on the floor of either House. When next I spoke to Lord Wells-Pestell he was pleased that this Bill was now "out of the way," and he thought that a second one would not be needed. I said to Sir John Richardson that I hoped he thought that this made a happy ending to my brief story of the "miracle" he had wanted.

References

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- 3 Committee of Inquiry into the Regulation of the Medical Profession, *Report*, Cmnd 6018. London, HMSO, 1975.
- 4 *Hansard*, House of Lords, 29 November 1977, col 1149.
- 5 *Hansard*, House of Lords, 29 November 1977, col 1184.
- 6 *Hansard*, House of Lords, 29 November 1977, col 1189.
- 7 *Hansard*, House of Lords, 24 January 1978, col 298.
- 8 Royal Commission on Medical Education 1965-8, *Report*, Cmnd 3569. London, HMSO, 1968.
- 9 *Hansard*, House of Lords, 13 December 1977, col 2047.
- 10 *Hansard*, House of Lords, 13 December 1977, col 2050.
- 11 *General Practitioner*, 13 January 1978, p 4.
- 12 *Hansard*, House of Lords, 24 January 1978, col 289.
- 13 *Hansard*, House of Lords, 2 February 1978, col 856.
- 14 *Hansard*, House of Lords, 5 May 1978, col 584.
- 15 *Hansard*, House of Commons, 20 April 1978, col 820.
- 16 *Medical Act 1978*, London, HMSO, 1978.

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In brief . . .

Medical manpower

The Joint Medical Manpower Fact-finding Group (1 July, p 66) met for the second time on 30 August. Professor Ian Rannie was in the chair and the Committee of Vice-chancellors and Principals and the University Grants Committee were represented. Though numerous statistics requested by the BMA were discussed, the group decided to adjourn until a full report was available. This is being discussed by ministers but is expected shortly.

Glanvill case: Mr Ennals appeals

The Secretary of State has lodged an appeal against the High Court decision that doctors' wives should qualify for the 70% reimbursement of ancillary staff salaries (2 September, p 714). Dr and Mrs Michael Glanvill of Chard, Somerset, had brought a case against the Secretary of State and the Somerset FPC. A DHSS statement last week said that "the decision to appeal in no way detracts from the continuing intention to find a more satisfactory way of giving appropriate recognition to the part played by doctors' wives in their husbands' practices and to its importance for the NHS."

Health and Safety at Work

In circular 1978 (GEN)49 the Scottish Home and Health Department has set out guidance to health authorities on how to meet the requirements of the Health and Safety at Work Act. The corresponding circular for England and Wales is not yet available. It had been hoped that the General Whitley Council would conclude an agreement on the implementation of the Safety Representatives and Safety Committees Regulations 1977 for the NHS, but this has not proved possible. The regulations

give all independent trade unions, including the BMA, the right to appoint safety representatives and the circular states that the responsibility of "informing and guiding safety representatives as regards their mode of operation and methods of carrying out their functions lies with the unions which appoint them." On the question of administrative costs the Department says that "no additional resources can at present be made available."

NCB medical officers

The National Coal Board, which had formed a joint working party with the BMA to discuss the regrading of the board's medical officers, has agreed the following revised scales, to operate from 1 April 1978: medical officer, grade 1—£9500 to £12 550; medical officer, grade 2—£9500 to £12 100; medical officer, grade 3—£6900 to £10 800.

Private outpatient and day facilities

In a letter to health authorities in June (24 June, p 1712) the Health Services Board announced that it would make proposals by the end of September (to take effect before 1 January 1979) to remove facilities for private outpatients and day patients for diagnostic purposes. Apparently some consultants have been unaware that these facilities existed in their hospitals and in some cases the administration had maintained that they did not exist. So nil returns have been made to the board. The secretary of the Joint Consultants Committee, BMA House, Tavistock Square, London WC1, would like to hear of any hospitals where, because of lack of information, the facilities have not been used. If there is sufficient evidence the JCC hopes to persuade the board that the facilities should remain beyond the specified date.