Medicolegal

The law on doctors speaking out

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Gillian Cardy, a senior clinical medical officer with Bath District Health Authority who was suspended from her duties on 16 December for speaking to the press about planned cuts in family planning services, was reinstated on 8 January after a health authority hearing. At the subsequent meeting of the health authority on 13 January a motion was passed expressing "regret at the recent distressing events" concerning Dr Cardy and appreciation for her work. She had spoken out about plans to cut back the work of family planning clinics and close well women clinics, which, she said, would lead to more unwanted pregnancies.

In January last year David Josephs, director of community medicine for South Bedfordshire Health Authority, was suspended for 10 weeks pending a disciplinary hearing after he spoke to the press, and on radio and television, despite instructions from his district general manager to stay silent. Dr Josephs said that stories in the press misquoted him on proposals for schoolchildren to be given condoms to protect them from AIDS and that his subsequent talking with the press was simply an attempt to "put the record straight."

Dr Josephs was reinstated with a formal written warning for "managerial misconduct" after a disciplinary hearing that also included a charge that he had "leaked" a confidential paper about measures to prevent AIDS to the director of social services of the local authority and chief environmental health officers, which he said was sent to professional colleagues for comment under a covering letter marked "confidential." He sought leave to appeal against the written warning to the regional health authority on the grounds that there had been a gross miscarriage of justice, but this was refused.

Doctors working in community medicine

The rights of doctors working in community medicine to make their views public are set out in paragraph 330 of the terms and conditions of service for doctors in community medicine and community health.

A doctor shall be free to publish any book or article of which he is the author or a contributor, or deliver a lecture or speech or make a broadcast. It is left to the doctor's discretion whether he obtains the consent of his employing authority; but where time permits and the book, article, speech or broadcast has a bearing on the affairs of his employing authority, the doctor would be expected to consult his employing authority first.

Speaking to the press is not covered specifically, but it would be strange if a doctor were to be free to contribute an article to a local newspaper setting out his views at length but banned from speaking to a journalist for quotation in an article. Moreover, the words "deliver a speech" could arguably include speaking to the press.

Disciplining a doctor for speaking to the press could in many cases be a breach of the contract of employment. Like Dr Josephs, Dr Cardy was suspended on full pay, but she was not, in the event, disciplined. Suspension on full pay for a short time is not in itself a breach of contract: employers are under a duty to pay employees but not, as a rule, to provide them with work. (Arguably, in the case of a highly skilled employee such as a hospital consultant, however, a long suspension could amount to a breach of contract.) A possible remedy for doctors disciplined for speaking to the press who wish to clear their name would be to seek a declaration in the high court that their behaviour did not amount to misconduct.

A number of doctors working in public health expressed concern to the committee of inquiry into the future of public health, which reported recently¹ about the question of freedom to speak out publicly on matters affecting the health of the district. The committee noted that before reorganisation the medical officers of health had the right to report in committee or open council meetings with the public and press present, where they could draw attention to dangers to health and recommend remedies that were sometimes controversial. The committee rejected the view that doctors in public health should have a right to pursue or advocate policies independently of any line of accountability, but recommended that the suggested new directors of public health should produce an annual report to be presented to the authority at an open meeting, thus re-establishing a formal opportunity to comment in public.

Hospital doctors

Doctors in hospitals are also speaking out in unprecedented numbers to protest against cuts in the National Health Service. The equivalent paragraph in the terms and conditions of service for medical and dental staff in hospitals leaves them freer than doctors working in community medicine to speak out. The clause, which omits any expectation that the doctor will consult the employer first, reads:

A practitioner shall be free, without the prior consent of the employing authority, to publish books, articles, etc, and to deliver any lecture or speech, whether on matters arising out of his hospital service or not.

So far, hospital doctors who have spoken out have not apparently come into serious conflict with their authorities. Nigel Harris, a consultant orthopaedic surgeon at St Mary's Hospital, London, has warned his authority—and announced to the press—that he will be advising patients whose condition deteriorates because of delays to sue the health authority not the doctors. But the authority, he says, sympathises with his reaction and has not attempted to gag him.

Eric Silove, a consultant paediatric cardiologist at Birmingham Children's Hospital and one of the signatories to a plea to Mrs Thatcher to do something about children's cardiac units, was, however, instructed by the chairman of his district health authority to make no further comments in the press. Bristol and Weston Health Authority were proposing in a new disciplinary code to make it a requirement that any employee wishing to make a statement that related to district health authority policy must clear it with the

district general manager. When BMA industrial relations officer Michael Wilks pointed out that this requirement would contravene consultants' contracts, the authority conceded that it would not apply to consultants.

Civil service doctors

Doctors in the civil service are gagged by the Official Secrets Act, which prevents them to some extent from even speaking to their own members of parliament about their worries. In September last year Tony Blair, Labour MP for Sedgefield, reported in *The Times* a conversation with a constituent, a doctor working in the Employment Medical Advisory Service, an arm of the Health and Safety Executive. Dr Anne Harrison told the member of parliament

that cuts would mean that the service's task of preventing diseases related to work could not be maintained.

Two days after the article appeared staff of the Health and Safety Executive received a memo from John Rimington, the director general, instructing them not to speak to the press or members of parliament. "It matters not whether what is said may be true or even whether in someone's personal judgment it needs to be said," the memo said. The director general warned that, although he did not propose to take disciplinary action in Dr Harrison's case, "in any future case, whether open or covert, I shall not take the same view."

Reference

- 1 Committee of Inquiry into the Future Development of the Public Health Function. *Public health in England*. London: HMSO, 1988. (Cmd 289.) (Acheson report.)

Medicine and the Media

DANCING CLEVER WITH manic depression, *Horizon's* "Playing With Madness" (BBC2, 8.10 pm, 18 January) tripped over its own footwork and the result was embarrassing nonsense.

The central theme was a miracle of indiscretion, balanced on unproved assumption and studded with *non sequitur*. At its most modest it suggested that hypomania may convey an advantage to its sufferers. At its most deafening it proposed that, thanks to manic depression, the Allies won the second world war.

There was, though, an unpretentious opening, a young woman running a fruit company explaining how attacks of mania—"so good it's scary"—had nearly wrecked her business through ill advised new ventures. So far, no problem, but, simple description over, the programme's sense of proportion then did a permanent bunk.

The trampolining logic went like this. Mania, it was conceded, was no good thing, but, since it might be expected to kill off its victim's chances of procreation—well, it just might—its reappearance in succeeding generations must be linked somehow to survival. You hardly had time to splutter Huntington's chorea or haemophilia before the link was identified as cyclothymia, here assumed to be a milder manifestation of the manic depressive gene. Cyclothymia, it babbled on, could be the emotional intensity lying behind both creativity and the incorrigible optimism on which depends day to day survival, not to mention the evolutionary progress of the human race.

"Somewhere in this glob of DNA is the manic depressive gene," crooned the jaunty voice over, heralding the Scientific Evidence. Chromosomes were paraded in close up before number 11 took its photo-opportunity. Amish communities in the United States have more than their share of manic depression, we were told, while a few normal Amish citizens plodded across the screen in illustration. Soon you guessed—no, you feared—that the point being made was that Amish traditions had survived the twentieth century because of the resilience of the numerous carriers of affective disorder.

Then came the Awed Speculation. Many writers, artists, and top men seem to have experienced mood disturbance. Suppose the artist's creativity or the politician's gutsy optimism were lesser effects of the manic depressive gene. Wouldn't this prove the main point—that artistic and social advances are positive products of the illness? Churchill confirmed it. Known to suffer from depression, his "manic optimism" won us the war. What about Hitler's manic optimism in invading Russia, you wanted to ask, but there wasn't time.

Finally, climactically, there was what could, or should, have been

self parody. What could emphasise the crucial association of creativity and social movement better than blues music? What indeed? And blues singers, it was announced triumphantly, lived a "cyclothymic lifestyle," meaning lots of booze and sex. QED.

Someone should have warned *Horizon* that some of their examples of great men with manic depression were wrong, that most of the "50% of creative artists" who claim mood swings have something well short of cyclothymia. Someone should have realised that incorrigible optimism, in any case a dubious basis for social progress, is a long leap from hypomania. And someone should have listened to the fruit company president who knew that increased creative output did not bring with it better judgment. Like most manic depressives, she feared an illness that could ruin her financially, destroy her socially, and threaten her life. She, and they, must have marvelled at the programme's blurred and blinkered vision.—LOUIS APPLEBY, lecturer in psychiatry, London.

WHEN I SWITCHED career from immunology to psychology I remember joking that I might become the first psycho-immunologist. Alas, now I would be at the end of a long queue. Professor Lewis Wolpert (*Antenna*, BBC 2, 20 January) introduced us to the emerging connections between the neurohormonal and immune systems. Wary that the full implications of this subject might evade even the erudite watchers of the second channel he emphasised the point: this was your actual 1980s version of the old mind over matter (or mind over malady as it was rephrased here) problem. Fair enough, but the otherwise absorbing series of claims and caveats made by fluent scientists was interrupted by gratuitous old film of a hypnotist who could, in the recall of an immunologist, emasculate lymphocytes with his suggestions. Better attested recent evidence indicated that stressful life events depress the immune system; people who lose a spouse are 10 times more likely to die in the next year; and extraverts get fewer colds than introverts.

Beneath the presentation of scientific advances, which was a fast succession of talking heads, graveside visits, cognitive therapy sessions, and well made body cartoons, lay an unarticulated irony. The mind-body problem has long been the domain of dualists, psychobabblers, and charlatans, yet here it appeared as yet more territory won over by biological reductionism. Even emotions, it seems, are neither sacred nor potentially very enigmatic. Our feelings, explained the director of the MRC Brain Metabolism Unit, George Fink, may be the result of neuropeptides from the limbic system.