

## EXPLANATORY NOTES ON THE LAW AND ETHICS

- 1 The fields of law and ethics to some extent overlap, although the standards which each imposes are not always the same in Criminal Law and Civil Law.
- 2 In order to make the ensuing paragraphs comprehensible, it is necessary to explain that the law of England is divided into two main categories known as the Criminal Law and Civil Law respectively. The Criminal Law governs the conduct of members of the community vis-a-vis the State: the Civil Law governs the rights and liabilities of citizens vis-a-vis one another. If a person contravenes the Criminal Law he is prosecuted by the authorities and, if found guilty, fined or imprisoned for the offence. If a person contravenes the Civil Law he is sued by the injured party and, if the claim against him succeeds, he is ordered to pay damages as monetary redress for the injury sustained by the plaintiff.
- 3 The Criminal Law is for the most part contained in Acts of Parliament whereas the Civil Law is largely case law, that is to say, it consists of the corpus of decisions taken by the courts in cases that have come before them. Exceeding the speed limit in a motor car is an example of a criminal offence. Inflicting injuries on another person through negligent driving is an example of a civil offence (though it may at the same time constitute the criminal offence of careless driving).
- 4 The principal statutory restrictions (the infringement of which would constitute a criminal offence) to which practitioners are subject are contained in Acts of Parliament which have, from time to time, been passed with the object of protecting the public against the unscrupulous activities of quacks and charlatans in the field of human and veterinary medicine. These are discussed individually in the Paragraphs below.
- 5 So far as the Civil Law is concerned, the only risk, apart from that which arises under the Apothecaries Act, to which practitioners are subject, is the one incurred by all professional people alike, namely, an action for damages for professional negligence. This is discussed below.
- 6 **Prohibited Appellation** In order to enable the public to distinguish between those who are professionally qualified and those who are not, the law makes it a criminal offence for anyone who does not hold the relevant qualification to use any of the titles specified hereunder or to use any other title or description which suggests or implies that he is on the statutory register of the persons who hold those qualifications. The titles are: Chemist; Chiropodist; Dental Practitioner; Dental Surgeon; Dentist; Dietician; Doctor; Druggist; General Practitioner; Medical Laboratory Technician; Midwife; Nurse; Occupational Therapist; Optician; Orthoptist; Pharmacist; Physiotherapist; Radiographer; Remedial Gymnast; Surgeon; Veterinary Practitioner; Veterinary Surgeon. It need hardly be said that a practitioner must scrupulously avoid the foregoing titles unless of course he is additionally qualified in any of the fields concerned when he is entitled to use the appropriate description.

This is a case where law and ethics coincide to a large extent for it would not only be illegal but also clearly unethical for an unqualified person to use a title such as doctor which in the medical context is well known as denoting a registered medical practitioner.

- 7 **Prohibited Functions:** In addition to prohibiting unqualified persons from using the titles and descriptions specified above, the law also precludes them from performing

certain specified functions in the field of medicine. These are: The practice of Dentistry; The practice of Midwifery; The treatment of Venereal Disease; The practice of Veterinary Surgery.

**7.1 Dentistry:** The relevant Act of Parliament defined dentistry as including the giving of any treatment, advice or attendance or the performance of any operation usually performed by dentists. Clearly, a practitioner who has not also qualified as a dentist would not seek to give or hold himself out as being prepared to give dental treatment such as fillings, extractions, scaling and the like. He might, however, want to treat a patient for toothache until such time as the patient could visit his dentist or to treat a dental patient for eg. pain or haemorrhage during or after a dental operation. It is impossible to say with any certainty whether such treatment would be held to constitute an infringement of the Act; but it can be said with some confidence that it would be most unlikely to attract a prosecution.

**7.2 Midwifery:** Except in cases of sudden or urgent necessity, it is an offence for anyone other than a certified midwife to attend a woman in childbirth without medical supervision or for anyone other than a registered nurse to attend for reward as nurse on a woman in childbirth or during a period of 10 days thereafter. Here again, a person who did not possess the necessary qualification could clearly not purport to practise midwifery as such.

**7.3 Venereal Disease:** Venereal disease is defined in the relevant Act of Parliament of 1917 as meaning 'Syphilis', 'Gonorrhoea' and 'Soft Chancre'. It is an offence for anyone except a registered medical practitioner for direct or indirect reward to do any of the following: Treat for venereal disease; prescribe any remedy for venereal disease; whether such advice is given to the patient or to any other person. The foregoing prohibitions are strict. Where, therefore, a patient informs a practitioner that he is suffering from VD or where a patient has physical symptoms which are clinically identifiable as VD, as described above, the practitioner must categorically refuse to treat him for that disease. Aids is not covered by the Act. It is for the individual practitioner to decide whether to give treatment to an AIDS patient. (Note: The BMA say that provided cuts and sores are covered the risk from hand healing is minimal. The DHSS say that in this situation the risk is nil).

**7.4 Veterinary Surgery** In addition to providing that, as has already been previously noted, an unregistered person may not use the title 'Veterinary Surgeon' or 'Veterinary Practitioner', the law also makes it an offence for such a person to practise veterinary surgery. The relevant Act of Parliament (the Veterinary Surgeons Act 1966) defined veterinary surgery as 'the art and science of veterinary surgery and medicine' and states that, without prejudice to the generality of that definition, it shall be taken to include the *diagnosis* of disease in, and injuries to, animals, including *tests* performed on animals for diagnostic purposes; the giving of *advice based upon such diagnosis*; the *medical or surgical treatment* of animals; the performance of *surgical operations* on animals'. BFVEA Members may treat animals as long as they do not perform veterinary surgery as defined above. They may also render first aid to animals for the purpose of saving life or relieving pain.

- 8 **Fraudulent Mediumship** The Fraudulent Mediums Act 1951 was repealed in April 2008 by the Consumer Protection from Unfair Trading 2007 (CPR's) which implement the Unfair Commercial Practices Directive (UCPD). The CPR's include rules prohibiting conduct which misleads the average consumer and thereby causes, or is like to cause him, to take a transactional decision he would not have taken otherwise'. Conduct could be

deemed unfair if it deceives the average member of (i) the group to which it is directed or (ii) a clearly identifiable group of consumers who are particularly vulnerable to this type of practice. The original Act required proof that the medium or healer was fraudulent. The changes will mean that a complainant can say they believe the medium or healer was fraudulent and it will be up to the medium or healer to prove they weren't.

- 9 **Advertising:** Here also there is an overlap between law and ethics. The law makes it an offence to take part in the publication of any advertisement referring to any article of any description in terms which are calculated to lead to the use of that article for the purpose of treating human beings for any of the following diseases: Bright's Disease; Glaucoma; Cataract; Locomotor Ataxy; Diabetes Paralysis; Epilepsy or fits; Tuberculosis.

It is also an offence to publish any advertisement which offers to treat or prescribe a remedy or advice for cancer, or refers to any article in terms calculated to lead to its use in the treatment of cancer.

It is worth noting in passing that there is no prohibition on treating a patient for the foregoing diseases and that in each case the offence is in advertising treatment. It is not possible to give a comprehensive definition of what the word 'advertisement' would be held to include in these contexts. The question would turn on the circumstances of each particular case; but it is not exclusively confined to advertisements published in the press, for a circular letter (issued in response to a request prompted by a press advertisement offering details on application) which stated that a certain product would cure tuberculosis and cancer has been held to constitute an advertisement.

At all times Advertising should comply with standards laid down by the British Code of Advertising Practice and meet the requirements of the Advertising Standards Authority.

- 10 **Treatment of Children** It is an offence under the law for the parent or guardian of a child under 18 to fail to provide adequate medical aid for the child. Thus a parent or guardian who consults a practitioner in respect of a child for whom he is responsible risks prosecution for failure to discharge his statutory duty;

It should be observed that the law does not prohibit a practitioner of any alternative or complementary technique from treating children. The importance of this matter for practitioners arises by reason of the doctrine of the Criminal Law known as 'aiding and abetting'. Under this doctrine, if A is guilty of an offence (whether of commission or omission) at which B connives or assists, B is said to have aided and abetted an offence and therefore to be him/herself also guilty of that offence. If a practitioner clearly explains to the parent or guardian of a child under 16 of the nature of the obligation imposed by the law, then it is most unlikely that a successful prosecution could be brought against the practitioner or aiding and abetting the statutory offence by agreeing to treat the child.

- 11 **Professional Negligence:** The meaning of the doctrine of negligence in English law is, very broadly, that in his contacts with other citizens a person must have certain regard for their interests and that, if through some act of commission or omission committed without sufficient regard for another person's interest, that other person sustains injury, he is liable to pay damages as monetary redress for the injury inflicted. The nature and extent of the regard which one person is required to have for another (or, as it is put in law, the "duty of care" he owes the other) depends upon the nature of the contact or relationship between them.

11.1 The relationship of the practitioner and patient, like that of advisor and client, automatically imposes on the practitioner a duty to observe a certain standard of care and skill in the treatment of advise he gives. Failure to attain to that standard exposes the practitioner to the risk of an action for damages. What, then, is professional negligence? It is not merely being wrong although there are patients who tend to think it is. It may, broadly speaking, take one of two forms: either lack of the requisite knowledge and skill to undertake the case at all, or else, while possessing the necessary knowledge and skill, failure to apply it properly. A 'professional' person of any kind is, by definition, one who professes to have certain special knowledge or skill not possessed by the layperson and, in general, a practitioner of any profession is bound to possess and exercises the knowledge, care and skill of an ordinarily competent practitioner of that profession. A person cannot, on the other hand, be held responsible for failing to exercise skill which he does not either express or imply to claim to possess.

11.2 Where *medical treatment* is concerned the standard required of a registered medical practitioner in general practice is that of an ordinarily competent doctor, whereas a more exacting standard is imposed on a specialist; and anyone who, although not a registered practitioner, claimed either expressly or impliedly to have the same skill as a doctor would be judged by reference to the standards which apply to doctors. It will therefore be seen that the knowledge and skill which practitioners profess to have is of crucial importance in the context of professional negligence. In order that they are not judged by standards that do not properly apply to them, it is essential that practitioners should, whenever the question arises, make it abundantly clear that they are not doctors, that they do not hold a qualification recognised by law, and that they do not claim to possess the same knowledge or purport to exercise the same skill as doctors.

*Comment:* It may be objected that such a statement is derogatory of alternative and complementary medicine and that it denigrates those who practise it. This is not so. The right and positive way of thinking about the matter is that it is a different art and science from that of orthodox allopathic medicine, that it is founded on different hypotheses, relies on different techniques and has its own skills. Emphasising this distinction helps to serve the dual purpose of promoting a better understanding of alternative and complementary medicine and preventing practitioners being judged by criteria which do not apply to them.

Assuming that the position had been established from the outset in any given case in which an issue of professional negligence arose, it will be seen that it would follow that the standard of knowledge, care and skill by reference to which the practitioner's advice and treatment should properly be tested would be that of an ordinarily competent practitioner. What then, is that standard?

It would be hard to say in the case of some therapies where the line denoting a minimum standard of reasonable competence in dealing with a particular case should be drawn. Proof that the case had been analysed and treated in accordance with the methods and precepts taught to students would be useful evidence in rebutting the charge of negligence. There is, nevertheless, one over-riding principle which applies to the practise of any kind of medical or quasi-medical technique. That principle is *that when the circumstances are such that the practitioner knows, or should know, that a case is beyond the scope of his particular skill, it becomes his duty either to call in a more skilful person or to take other steps to ensure that the patient no longer relies implicitly on his skill alone.*

One of the most important attributes for every practitioner to have at each succeeding stage of his career is some awareness of the *limits* of their capacity. When they feel that

point has been reached in any particular case, they should not hesitate to seek another option.

- 12 **Disciplinary and Complaints Procedures.** It is essential that any individual practising as an alternative or complementary therapist should belong to a professional association which has a clearly defined Disciplinary and Complaints Procedure for dealing with allegations of misconduct or otherwise.
- 13 **Insurance** Any individual wishing to practise as an alternative or complementary therapist must ensure that they are adequately insured to practise. Such Insurance should cover public liability and professional indemnity against malpractice.
- 14 **Premises** When carrying on a trade, business or profession from any premises an individual must ensure that their working conditions and facilities to which members of the public have access are suitable and comply with all legislation.

In the case of practitioners using their own homes as a base for their practice, in addition to complying with national legislation for any therapy they practise, they should check on any local authority bye laws covering their practice as these vary considerably throughout the country.

If staff are employed on the premises, practitioners must pay equal attention in this area.

Practitioners working from home should give special attention to insurance, the terms of their lease or other title deeds and any local government regulations limiting such practice or under which they may be liable to pay business rates.

- 15 **The Apothecaries Act** It is necessary to mention briefly the Apothecaries Act of 1815. This Act makes it unlawful for anyone not qualified as such to practise as an Apothecary. An infringement of the Act is not a criminal offence, but it renders the offender liable to civil proceedings brought by The Society of Apothecaries for the recovery of a penalty of £20.

The Act does not define what is meant by practising as an Apothecary, but cases which have, in the past, been brought under the Act indicate that it means something in the nature of practising medicine (as opposed to surgery) by giving advice or treatment, that it is not confined to the function of dispensing and that a practitioner might be held to be practising as an Apothecary.

On the other hand, the Act has not, so far as is known, been invoked since 1908 and, although it is still on the Statute Book, it seems that the risk of proceedings being brought against practitioners by the Society of Apothecaries is very remote. In any case, if and in so far as the risk exists, there is nothing whatever that can be done to guard against it and it is therefore one that has to be accepted.

- 16 **Oral Remedies.** The position as regards the supply of oral remedies depends on the Medicine Act 1968 and regulations made, or to be made, thereunder. Basically this legislation has two main purposes: First, it requires anyone other than doctors, vets, midwives, nurses and pharmacists who sell or supply medicine of any kind to other people to hold a licence. Secondly, it imposes control on the circumstances in which medicines can be supplied to the public.

Medicines are termed "medicinal products" in the Act and a medicinal product is defined as meaning any substance supplied for use by being administered to a human being for a medicinal purpose. It therefore includes not only allopathic medicines but also all such substances as homeopathic and naturopathic remedies, vitamins, biochemic tissue salts and even unadulterated sac lac when it is administered as a placebo. (Flower, gem and other essences are classed as foods in the UK unless the producer makes medicinal claims for them)

Under the current Act any practitioner who supplies oral remedies needs a licence unless he merely passes on to his patients/clients remedies he obtains from his supplier in the unopened containers in which he supplies them. In such cases no licence is required provided the supplier (who may or may not be the manufacturer) holds a 'product licence' covering the remedy in question. This may be the case, but where there is doubt the practitioner would be wise to check the point with his supplier.

A practitioner who by contrast wishes to obtain remedies in bulk and distribute small quantities to different patients/clients will need a licence authorising the 'assembly' of medicinal products, "assembly" being the technical term used to denote breaking bulk and distributing in small quantities. The present annual fee for such a licence is £100.00 or 0.5% of the turnover of medicinal products sold by retail or in similar circumstances, provided that the turnover figure is less than £20,000.00. Licence fees are reviewed from time to time.

The way to obtain a licence is first to obtain an application form MAC24B from the Medicines and Health Products Regulatory Agency, Market Towers, 1 Nine Elms Lane, London SW8 5NQ.

- 17 **Notifiable Diseases** It is a statutory requirement that certain infectious diseases are notified to the Medical Officer of Health of the district in which the patient/client resides or in which he is living when the disease is diagnosed. The person responsible for notifying the MOH is the GP in charge of the case. If, therefore, a practitioner were to discover a notifiable disease which was clinically identifiable as such he should insist that a doctor is called in. Each local authority decides which diseases shall be notifiable in its area. There may therefore be local variations, but it is assumed that the following diseases are notifiable everywhere:

Acute encephalitis	Infective jaundice	Plague
Acute meningitis	Leprosy	Rubella
Acute poliomyelitis	Leptospirosis	Relapsing Fever
Anthrax	Malaria	Scarlet Fever
Cholera	Measles	Tetanus
Diphtheria	Mumps	Tuberculosis
Dysentery	Ophthalmia	Typhoid Fever
Food poisoning	neonatorum	Whooping
	Paratyphoid Fever	Cough
		Yellow Fever

- 18 **Post Mortems.** A post mortem has to be carried out before a Death Certificate can be issued in any case where the deceased has not been seen by a doctor during the four weeks preceding his death. There is always a possibility of post mortem leading to a

Coroner's inquest and, where an inquest is held, it is not impossible that in certain circumstances questions might be asked about the treatment the deceased was receiving and the efficacy for relieving the condition from which he was suffering.

It follows that, where a patient/client, suffering from a terminal or potentially fatal condition is not seeing a doctor more than once every four weeks, the practitioner should insist that he sees a doctor at intervals of no more than four weeks in order that, should the patient/client die, a Death Certificate can be issued and an inquest avoided.

- 19 **False and Misleading Statements.** The law on this subject was greatly expanded by the Misrepresentations Act 1967 and the Trade Descriptions Act 1968. Under the 1967 Act, a patient/client who engages the services of a practitioner and pays fees for treatment which proves unsuccessful could recover these fees (and any other expenses incurred as a result of unsuccessful treatment) as damages for breach of contract if he could show that he was induced to engage the practitioner's services by means of a misrepresentation made by the practitioner about the efficacy of the treatment. Similarly, the patient/client who was so induced could, if sued by the practitioner for unpaid fees, successfully resist the practitioner's claim. In as much as the patient/client who was so induced could, if sued by the practitioner for unpaid fees, successfully resist the practitioner's claim. In as much as the patient/client confronted by such a claim might be tempted to raise the defence of misrepresentation and such a defence would be damaging to the reputation of the practitioner and alternative and complementary medicine.

Under the 1968 Act any statement about the properties of goods or the nature of services offered which is false, misleading or inaccurate can give rise to prosecution. a person guilty of an offence under the Act is liable, on summary conviction, to a fine not exceeding £400.00 and, on conviction on indictment, to a fine (of no specified maximum) or to imprisonment for a term not exceeding two years, or both.

As practitioners do not normally sell or supply goods, the main importance of this Act lies in its provisions concerning false statements as to services. Broadly, it is an offence for a person to make a statement which is false to a material degree if he knows it is false, or is reckless as to its truth or falsity, about the nature of any services offers or the time at which the manner in which or the person by whom the services are provided. In that connection it is particularly noteworthy that the Act provides that, in relation to any services consisting of or including the application of any treatment, a false statement about the nature of the service shall be taken to include false statements about the effect of the treatment.

Although these provisions occur in a Statute relating to trade, professional services are not expressly excluded and, unless and until the Courts hold otherwise, it must be assumed that they apply to persons who offer professional services no less than persons who offer commercial services. It would therefore be unwise for a practitioner to make any statement about himself, his qualifications or experience, his ability to diagnose or treat or the beneficial effect of treatment in general unless he knew positively that such statement was true and what is more, could prove it to be true. This only serves to emphasise the importance of the point already made above that practitioners should exercise great restraint in the terms they use to describe their own abilities and the powers of alternative or complementary medicine in general.

- 20 **Legal Advice.** Any practitioner who find themselves faced with the possibility of legal proceedings whether criminal or civil and however remote, should immediately notify the BFVEA Disciplinary Officer. Members insured under the BFVEA scheme may obtain free legal advice from our insurers.