

PUBLIC INTEREST FORGOTTEN?

The ailing credibility of doctors

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FOR THE FIRST time in the history of the medical profession in Ontario, Health Minister Larry Grossman has been forced to impose upon it a regulation governing conduct. The imposition is the culmination of events that have called into question the credibility of the profession's disciplinary and licensing body — the College of Physicians and Surgeons — in protecting the public interest and being seen as independent of the Ontario Medical Association.

The current issue revolves around the request that physicians notify patients in advance if they are going to charge additional money beyond the benefit from the health insurance plan.

Last June the Health Minister made this request to the college and asked it to designate absence of such advance warning as professional misconduct. This would have placed the action in a category of some 32 other misdemeanors ranging from the specific — having an entry in the yellow pages in bold type or failing to complete forms requested by a patient — to the general — failing to "maintain the standard of practice of the profession". These 32 regulations make up the "professional misconduct" clause for physicians under the Health Disciplines legislation. As a self-regulating profession, the physician members of the College of Physicians and Surgeons administer the legislation and are made responsible for ensuring that the profession operates in the public interest.

It would have seemed reasonable, therefore, for the college to agree to the minister's request for prior notification of the public by physicians who extra-bill. It did not. After the minister's request, the college is allowed 60 days to respond and last August the college, in a letter to its membership, stated that it would "refuse the request of the Minister of Health to add the proposed regulation".

Discussions on the issue continued behind closed doors, with no public reason given for the college's refusal. Presumably the search could produce no private reason either, because in March of this year the minister exercised his prerogative to impose the regulation on the college.

At this point the OMA — the "trade union" for doctors — decided to enter the discussion, beyond whatever communication it already had with the college. The OMA wrote Premier William Davis expressing dismay at this "unnecessary and restrictive action", and complaining that the effect of the regulation was "to elevate a minor indiscretion to the level of a major breach of professionalism". A difficult argument to maintain when the physicians had already elevated failure to fill out forms for a patient to professional misconduct status.

The OMA also maintained that "the number of cases in which lack of prior notification has created any burden for patients is infinitesimally small". This position would seem to contradict the college's opinion, which (despite the fact it refused to pass the regulation) noted in 1981 that physician failure to inform patients of excess fees beyond OHIP was "the second commonest issue dealt with by the Complaints Department".

However, the likely real concern of the OMA was captured by the statement that "this is the first time in its 102-year history that the Minister of Health... has unilaterally forced a regulation upon the



Toronto doctors at a mass meeting last year during their dispute with the Government over fees.

College of Physicians and Surgeons of Ontario and, by definition, on the profession".

As a self-regulating profession physicians must walk a fine line between advancing their own interests and protecting the public interest. If they are seen to favor their members' interest over the public's interest, their credibility is eroded and their right to self-regulation questioned. Hence two distinct organizations exist: the OMA — the profession's interests — and the college — the public's interest exercised on its behalf by physicians.

The college's refusal to accede to the Government's request for a regulation, and, most important, its failure to provide any good reason for the refusal, would appear to place it closer to the interests of the profession than those of the public. The necessary dividing line between college and OMA seems to be getting hazy.

Mr. Grossman's precedent-setting imposition of the prior notification regulation should be read by the profession as a signal that he considers it to be losing credibility. Instead, Ontario physicians have most recently chosen to complain about the threat to their "status as independent businessmen".

What has precipitated the increasing lack of credibility in the college's ability to "protect the public interest"? Clearly, it is difficult for the college to defend its refusal to pass the prior notification regulation on any public interest grounds, especially given the long-standing existence of an identical advance-warning requirement for charges above the OMA's own fee schedule. What's sauce for the goose does not appear to be sauce for the gander.

This is not, however, an isolated and rare lapse in the college's vigilance over the public interest. Consider the following selection of college actions in the recent past.



Grossman cracked down.

In an Ottawa court in May, 1980, a physician pleaded guilty of sexually assaulting a 23-year-old woman who, only weeks before, had been told by the college that her complaint against the doctor was unfounded. The college had unquestioningly accepted the Ottawa physician's version of events.

During the OMA's withdrawal of service in April last year the objectivity of the college was once again called into question when it was revealed that some of the 21-member board, entrusted with

protecting the public from any over-zealous withdrawals of service by physicians, were taking part in walkouts themselves. More recently the college, acting in its licensing capacity for Ontario, decided arbitrarily to exclude from practice any doctors trained outside the six main English-speaking countries. Physicians trained in France, or other mainland European countries, would be effectively excluded from practicing in Ontario. Justifications for this on grounds of protecting the public interest are difficult to unearth. Another blow to credibility.

Finally, the college appears to have grown so unaware of its function of protecting the public interest that in its recent brief to the Ontario Council of Health's Policy Conference it spent considerable time recommending the introduction of user fees on patients, stating that "shifting health policy away from total comprehensive coverage to some degree of user participation for some services is fundamental". It is difficult to appreciate upon what grounds the college feels user fees will contribute to protection of the public interest. And one is left asking whether it is purely coincidental that the introduction of user fees has long been a favorite policy proposal of the OMA.

Such suggested links between college policy and OMA policy erode the profession's credibility, given the supposed independence of the two organizations. It is no more reassuring to discover that many of the college's senior staff have received their initial training at the OMA. The college's registrar, Dr. Michael Dixon, spent seven years on the staff of the OMA prior to taking up his current appointment in 1979.

The Minister of Health recently instituted a review of all the professions. Perhaps particular attention in this review should be paid to the College of Physicians and Surgeons.