

Ethics, Liabilities and Licensing to Practice

DE Aarons

ABSTRACT

Medical Councils or Boards are the de facto gatekeepers of the work of medical doctors and their interaction with the public. This article examines some of the ethical and medico-legal issues that may arise when biomedical doctors are not licensed in a particular year to practice medicine. It scrutinizes pertinent sections of the Medical Act of Jamaica and considers the ethical implications of the particular predicament for patients and pharmacists who are requested to fill prescriptions written by doctors who are not in receipt of a practising certificate at the time.

Ética, Responsabilidades y Autorización de Licencias Para la Práctica Médica

DE Aarons

RESUMEN

Las Juntas Médicas son de hecho salvaguardas del trabajo de los doctores de medicina y su interacción con el público. El presente artículo examina algunos de los problemas éticos y médico-legales que pueden surgir cuando los doctores biomédicos no poseen licencia en un año en particular para practicar medicina. El trabajo examina cuidadosamente las secciones pertinentes del Acta Médica de Jamaica, y hace consideraciones sobre las implicaciones éticas de la difícil situación particular de los pacientes y farmacéuticos a quienes se les pide llenar prescripciones escritas por doctores que al momento de hacerlo, no han recibido todavía un certificado de autorización para la práctica.

West Indian Med J 2007; 56 (3): 208

INTRODUCTION

In the English-speaking Caribbean countries, Medical Councils or Boards are mandated by law to register medical practitioners and be the gatekeepers of their work and interaction with the lay public. In Jamaica, doctors are required to complete 10 hours of continuing medical education (CME) per year in order to be registered to practice medicine the subsequent year within the country. The registration year runs January 1 to December 31.

This article examines the medico-legal and ethical implications of some of the issues ensuing when more than a half of all doctors on the Medical Register of the Medical Council of Jamaica did not register with the Council for the year 2006 by the deadline allowed by that licensing body.

OBLIGATIONS AND LICENSING

In February 2006, the Medical Council of Jamaica reminded doctors through the print media to submit the required documentation of CME with the payment of the requisite annual

dues by the end of February in order to obtain practising certificates for the year or face penalties (1). In May 2006, the Jamaican print media published a release by the Medical Council of Jamaica of the names of 1048 medical practitioners who were issued practicing certificates for the year (2). The Medical Council of Jamaica had 2673 medical practitioners on its register (although a few had migrated). This meant that approximately 1600 registered medical practitioners were not licensed to practice medicine in Jamaica during 2006 (3).

The implications of this are several. Should pharmacists refuse to fill prescriptions written by these doctors during the course of the year? If pharmacists fill these prescriptions and the patients come to harm should the offending pharmacists be charged vicariously in any lawsuit that might be filed by the patient? The Pharmacy Act of Jamaica does not speak to such issues (4). What are the implications for such doctors?

Doctors are ethically obliged to practice to the highest level of their competence, and to keep themselves up-to-date in their particular field of service to the public (5). Where care provided to patients deviates from the prescribed standard of care (as determined by the reasonable doctor's standard) and the patient comes to harm as a result, then the doc-

From: Department of Community Health and Psychiatry, The University of the West Indies, Kingston 7, Jamaica, West Indies.

Correspondence: Dr DE Aarons, PO Box 65, Tower Isle, St Mary, Jamaica, Fax: (876) 975-5719, e-mail: daarons@mail.infochan.com.

tor is liable to be charged for negligence (6). Now the charge of negligence assumes that the harm which the patient suffers was not intended by the doctor – it was a consequence of a deviation from the standard of care. However, where a doctor knows he is not licensed to practice medicine within a country in a particular year, yet knowingly writes a prescription, or in some way, attends to a patient without due care, and that patient comes to subsequent harm – as the doctor is not licensed to practice medicine at that time, could the doctor be charged with committing a criminal act (consequent to practicing medicine without a proper medical license) and be successfully convicted, in addition to the charge of negligence?

Subsequent to its press release, the Medical Council in Jamaica would likely have been subject to much pressure, particularly by very influential doctors whose names did not appear on the published list because they did not achieve the necessary 10 hours of CME during the previous year (7, 8). Doctors ought not to backdate sick leave certificates (9) and so if the Medical Council of Jamaica issued certificates of registration for doctors to practice during the current year, when the 10 hours of CME were not done during the previous year but rather were acquired in the current year, would this act be tantamount to backdating? The Medical Act of Jamaica is silent on this matter (5). Against this background, what reason would the Medical Council give for adding these doctors' names to the list of doctors licensed to practice medicine in the current year? To be more specific, on being left off the published list of licensed doctors, many doctors would have quickly attended some CME sessions during the current year to achieve the 10 hours required by the Medical Council of Jamaica. Yet – acquiring the CME hours during the current year ought to facilitate that doctor obtaining a practicing certificate for next (the subsequent) year, once the requisite fee is paid. In other words, to meet the specifications of the Medical Council in order to be licensed to practice medicine during the current year in Jamaica, doctors should have obtained the CME during the previous (*ie* last) year. Consequently, on what ethical principle would the Medical Council justify providing a doctor who did not do any or insufficient CME hours last year, a certificate to practice medicine in Jamaica this year using CME obtained during this current year?

THE MEDICAL ACT

The Medical Act of Jamaica (1976) describes the “functions” of the Medical Council as threefold:

1. To register medical practitioners
2. To appoint examiners to conduct examinations in respect of persons applying for registration as medical practitioners as may from time to time be necessary under the provisions of the Act, and
3. To ensure the maintenance of proper standards of professional conduct by registered medical practitioners (10).

For the purposes of this discussion, we shall examine section 3 as stated above, as well as pertinent sections of subsequent regulations.

Enacted subsequent to the Medical Act of 1976, the Medical (Practising Certificate) Regulations 1996 addressed the matter of fee payment and practising certificates for registered medical practitioners stating *inter alia* in section 3 (1) “*A medical practitioner who is the holder of a practising certificate shall, within two months after the expiry of the practising certificate, pay to the Council the appropriate renewal fee set out in the Schedule, for the renewal of the practising certificate*” (11). Section 3 (2) states “*Where a medical practitioner fails to pay the appropriate renewal fee within the period specified in paragraph (1) he shall, subject to paragraph (3), at the time of making payment, pay a renewal fee equivalent to twice the amount of the appropriate renewal fee*”. Section 3(3) then states “*A medical practitioner who satisfies the Council that he has not practised within the period of twelve months prior to the date of renewal of the Practising Certificate shall pay the appropriate renewal fee referred to in paragraph (1)*”.

An amendment to the Medical Act – the Medical (Amendment) Act 1996, stated in section 7A(1) that “*A person registered under this Act as a medical practitioner shall only practise as a medical practitioner while he is in possession of a valid practising certificate issued to him by the Council in the form set out in the Fourth Schedule, on payment of the prescribed fee to the Registrar*” (12). The amendment also inserted the wording for the Practising Certificate, specifying the period of the entitlement to practise as a medical practitioner to end on December 31 of the particular year. Whilst the amended Act does not specify what would be the consequences for a doctor practising without the practicing certificate, the procedure to be followed by the Medical Council in disciplinary matters was set out in the Jamaica Gazette on Nov. 5, 1976. On page 21 of the Medical Council “*A Guide to Medical Ethics*”, the booklet states that the Council may censure, suspend or remove a medical practitioner's name from the medical register (13).

From the above, therefore, the reader may glean that with the advent of the requirement for a practising certificate for the renewal of a doctor's registration, the focus became one of fee payment, with penalty applied where the required fees were not paid on time. The Act thus recognized the competence of doctors to practise medicine in Jamaica, but prohibited them from doing so unless they paid the requisite fees. In other words, whilst the focus of the Medical Act (1976) appears to be the protection of members of the public (requiring that doctors practising in Jamaica are appropriately registered and meet “proper standards of professional conduct”), the subsequent regulation and amendment (1996) focused on fee payment by doctors.

In a subsequent amendment, called the Medical (Amendment) Act 2004, which should be read and construed

as one with the Medical Act 1976 (referred to as the principal Act) and all subsequent amendments thereto, Section 7A of the principal Act (which described the process for registration of a medical practitioner) was amended with the addition of the following subsection: “*A practising certificate shall not be issued to a medical practitioner unless the Council is satisfied that the medical practitioner has complied with the prescribed requirements for continuing medical education*” (14).

Significantly, however, the Medical Act (read Law) does not specify what the requirements are for “continuing medical education”, nor does it state during what period this “education” should be obtained. In this regard therefore, the Medical Council of Jamaica has significant latitude to set, alter and upgrade the requirements that doctors who wish to practise medicine in Jamaica should meet, and they have set a requirement of 10 hours of CME per year for each medical practitioner (3). It is against this background that the author shall now consider the fairness to patients of the conditions stated prior as well as to pharmacists who are required to fill prescriptions written by doctors.

THE MATTER OF ETHICS AND LAW

Ethics aims to achieve two fundamental objectives:

- * To tell us “how we ought to act in a given situation”; and
 - * To provide us with “strong reasons” for doing so (15).
- Strong reasons provide justification for action – and reasons are more easily justified when they are properly based on ethical principles or premises. In other words, an appeal to ethical theory provides significant strength to one’s arguments in seeking to provide justification for actions or a course of action.

As mentioned previously, the requirement that registered medical doctors be only licensed to practice annually if they have completed the prescribed requirements for continuing medical education (CME) was enacted into Jamaican law in 2004 (statute law). Whilst not all laws have ethical premises, this law would seem to underscore the ethical principle of utility – seeking to maximize the good for as many persons among the Jamaican public as is possible. The assumption is that if doctors were compelled by law to attend seminars, courses and conferences, they would update their knowledge or acquire new skills that would benefit the society (beneficence). Naturally, such a law would not be necessary were all doctors, in seeking self-improvement, attending medical seminars and conferences of their own accord. As some doctors were attending voluntarily while others were too busy or disinterested, then the government – as the body charged with ensuring the welfare of all its citizens – would be obliged to enact such a law. This law would seek to ensure that all doctors practising in Jamaica maintain a standard of knowledge and skills applicable to the practice of medicine that is in keeping with the ever-increasing knowledge in medicine and healthcare, and current standards of practice available in other parts of the world.

As a corollary, the Medical Council should ensure that laws made by the government applicable to medicine and healthcare are enforced to ensure the welfare of members of the society. This duty is enshrined in the Medical Act of Jamaica and the disciplinary actions against doctors that are available to the Council were previously mentioned. English-speaking Caribbean countries sharing a British heritage would also have a similar Medical Act. Whilst powers of apprehension and detention lie with the members of the police force, the medical council would have the responsibility of monitoring its members’ performance of their duties to the public, and to bring to the attention of the police those of its members who are found to be errant in their duties as required by law or who have not met the requirements to practice as stated under the law and yet are still practising medicine.

Unfortunately, whether due to a lack of will or resources, the Medical Council of Jamaica does not have a monitoring arm of its administration to adequately meet its function as required under Section 3 in the Medical Act stated above. In order to “*ensure the maintenance of proper standards of professional conduct by registered medical practitioners*”, the Medical Council should be doing some monitoring of doctors’ practice. Currently, its complaints and disciplinary mechanism is insufficient as the mechanism depends on written complaints against doctors from the general public before the Council proceeds to investigate. This is unfortunate as only those members of the general public who are literate and who further feel motivated enough to make written complaints against offending doctors to the Medical Council are likely to be heard. With this approach, the likelihood is that a large proportion of breaches of professional conduct will not be brought to the attention of the Medical Council. Many reasons for this exist. Firstly, the comparatively low level of literacy existing within sections of the Jamaican population as well as people’s reluctance to have their letter-writing ability critically scrutinized, effectively rules out the reporting of aberrant doctors by persons from particular socioeconomic sectors of the Jamaican society. This effectively mutes, if not discriminates against this sector of persons. Ironically, if abusive doctors exist, persons from these sectors of society would likely be those most subjected to abuse (those relatively powerless).

Further, Jamaicans are well known for “veranda” discussions or for calling radio talk shows about issues that irk them, but often do nothing beyond “talk” and “vent”. In addition, some persons are unsure whether the doctors against whom they are complaining will be able to identify them and be able to discriminate against them or persecute them in the future.

Whilst the foregoing militates against the Medical Council being made aware of the full extent of doctors’ improper conduct, to compound the problem – the Medical Act of Jamaica does not provide details regarding how the Medical Council should monitor the proper standards of pro-

professional conduct of registered medical practitioners to secure the health and welfare of the general public. Without a monitoring arm, the Medical Council of Jamaica will not be able to effectively monitor whether a medical doctor may still be practising medicine without the requisite on-going medical education or is retired, mentally ill or off the island. In western countries, however, society gives the privilege and entrusts the medical profession to monitor its members to ensure proper professional conduct and their continuing competence (16). The various medical professional associations presumably have the interest to ensure the proper professional conduct and medical competence of their members, but they are not legally charged with nor have the legislative power to mandate their members to maintain either of these ideals. In this grey *in-between*, therefore, the patient's expectation and considered right to assume the on-going medical competence and high professional conduct of all doctors licensed to practise medicine in Jamaica is not fully sustained by the current legislation nor by the ability of the Medical Council to effectively monitor doctors.

Effective monitoring would involve some medical auditing of doctor's offices to ascertain the quality of care being offered to the public, and whether all the Medical Council's regulations are being followed. In fact, whilst the Council requires that a current practising certificate be displayed in the doctor's office in a prominent place, currently no check is made of doctors' offices to ascertain whether this is being done. With no such monitoring arm, the Medical Council is not able to know with any degree of accuracy, whether doctors to whom no practising certificates for the current year were issued are still attending to patients in their medical offices. In other words, they are unable to advise the enforcement arm of the state (the Police) which doctors may be practising in violation of the law while simultaneously putting patients at risk of receiving no compensation if they come to harm due to negligent care (it is possible that a tort of negligence may not succeed in court as the doctor was not licensed to practice medicine during the period in which the patient came to harm).

What other consequence might there be to the non-licensing of doctors during the current year? Normally, a pharmacist's work follows that of the doctor in filling prescriptions which the doctor has written for the patient (4). In filling prescriptions, however, pharmacists are obliged to ensure that the prescription about to be filled was written by a medical doctor registered and licensed to practise medicine in the particular locality (17). If the pharmacist is unfamiliar with the doctor's name inscribed on the prescription, she/he is obliged to ascertain from the offices of the Medical Council of Jamaica whether the prescribing person is a registered medical practitioner who is licensed to practice medicine in that country for the current year. Any deviation from the above could render the pharmacist open to medical liability claim should the patient come to harm during the course of his/her care due to some negligent act. In other words, the

pharmacist might well be charged vicariously with the doctor. It therefore behoves pharmacists to keep up-to-date on which doctors in their vicinity might not be licensed to prescribe medications during any given year.

CONCLUSION

Doctors, hospitals and health authorities owe a duty of care directly to their patients, and hospitals and health authorities are held by law vicariously for the actions of their employees. When a patient suffers personal injury because of a medical action or inaction, negligence may be deemed to have occurred and the matter is actionable in the Courts with the doctor being held to be liable. This article has argued that – whilst biomedical doctors are ethically obliged to practise medicine to the highest level of their competence – government, through their administrative arm – the Medical Council, should have the obligation to protect the welfare of patients by ensuring that doctors meet their obligations. As no system of regulation is effective without proper monitoring, the current system of depending on offended patients to report aberrant doctors to the Medical Council of Jamaica is inadequate to meet the requirements as stated in the Medical Act of Jamaica.

Professionalism is a privilege granted by society and professionals are held to higher standards of behaviour than are non-professionals (16). Professionalism also means that the professional must be prepared to be fully accountable for all decisions taken. Doctors have professional obligations that they must fulfil in order to satisfy public expectations. In order to maintain public trust, there needs to be proper oversight and enforcement of regulations by medical councils, assisted by professional organizations. Whilst most doctors in Jamaica meet and surpass society's expectations of them, where some falter, the principle of non-maleficence should be paramount. In other words, the society's appointed "protective" arm – the Medical Council – should work to ensure a minimalization of harm or potential harm from aberrant doctors. Whether due to a lack of will or resources, the current functioning of the Medical Council of Jamaica falls short of achieving the minimalization of potential harm to patients and of ensuring the best interests of all patients.

REFERENCES

1. The Jamaica Gleaner. Kingston, Jamaica: February 28, 2006.
2. The Jamaica Gleaner. Kingston, Jamaica: May 29, 2006.
3. The Jamaica Gleaner. Kingston, Jamaica: May 30, 2006.
4. The Pharmacy Act. Kingston, Jamaica: The Jamaica Gazette, August 4, 1975.
5. The Medical Amendment Act. The Jamaica Gazette: December 21, 2004.
6. Aarons DE. MD 68D: Medico-Legal Issues in Primary Care. Faculty of Medical Sciences, Mona, UWI: Master's in Family Medicine, 2003.
7. The Jamaica Gleaner. Kingston, Jamaica: June 7, 2006.
8. The Jamaica Gleaner. Kingston, Jamaica: July 26, 2005.
9. Aarons, DE. MD 67D: Medical Ethics and the Doctor-Patient Relationship. Faculty of Medical Sciences, Mona, UWI: Master's in Family Medicine, 2002.

10. The Medical Act. The Jamaica Gazette: November 1, 1976.
11. The Medical (Practising Certificate) Regulations. The Jamaica Gazette Supplement: December 31, 1996.
12. The Medical Amendment Act. The Jamaica Gazette: February 13, 1996.
13. The Medical Council of Jamaica. A Guide to Medical Ethics. Kingston, Jamaica: Stephenson's Litho Press Ltd, 1993.
14. The Medical Amendment Act. The Jamaica Gazette: December 21, 2004.
15. Aarons DE. Medical Ethics: A Sensitization to some important issues. West Indian Med J 1996; **45**: 74–7.
16. Aarons DE. Issues in Bioethics: Ethics and Professional Responsibilities. West Indian Med J 2003; **52**: 4–9.
17. Aarons DE. Issues in Bioethics: Ethics in Health Policy and Guidelines in Health Care. West Indian Med J 2006; **55**: 110–6.