

LEGAL REGULATION OF HEALTH PERSONNEL

INTRODUCTION

The following three articles are devoted to an examination of the legal framework of the health services, and its effect upon the adequacy and flexibility of health care delivery systems to meet present and projected needs and demands.

The health professions and occupations constitute one of the major "regulated industries" in America. The basic regulatory norms are set by the state licensure statutes. To protect the public against incompetent and unethical practitioners, these statutes define the functions which each profession and occupation is authorized to perform, and specify the requirements of character, education, and training which licensed practitioners must meet. In connection with these licensure statutes, provision is made for the approval of educational institutions and the examination of candidates for licensure. To oversee the continuing eligibility of licensees, the statutes provide grounds and procedures for renewal, suspension, revocation, and reinstatement of licenses, the enforcement of which is placed in the hands of agencies with administrative, judicial, and regulatory powers.

Supplementing these basic licensure laws are other procedures which serve to regulate the quality of health care. The courts exercise control over the quality of performance of health practitioners through malpractice suits. State and federal governments exercise control through licensure of hospitals and other health institutions and through financing of health programs requiring certain standards. Professional and non-governmental organizations exert controls through accreditation of hospitals, specialty board certification, and approval of training programs. Within hospitals, moreover, there are professional controls exercised by the medical staff organization, such as appointment standards and quality control committees. These non-governmental standards are often reinforced by incorporation in governmental requirements.

Almost the whole of this regulatory framework is centered on health personnel, their character, training and competence. Most of it is state, rather than national, regulation. Its aim is the provision of health services of sufficient skillfulness and flexibility to meet the nation's needs. But the health services landscape in the United States of today is in a period of accelerating change, registering, all at once the impact of the information and technological explosion, the growth of specialization and the decline of the general practitioner, the shortage of physicians and allied health

manpower in relation to needs and demands, the increasing provision of health services in organized frameworks, the growth of prepayment systems for health service, the spiralling costs of medical care, and the increasing role of government in medical education and the provision of health services. The question is: does the present regulatory system provide, for present and projected health-care realities, the most effective legal context?

The articles following grew out of a study, commissioned by the National Advisory Commission on Health Manpower, of the legal framework of American medicine. That study involved an examination, tabulation and evaluation of the relevant statutory law (as of September, 1967) of the fifty-one United States jurisdictions and such judicial decisions as were necessary to an understanding of that statutory material. Several additional sources were used to amplify the statutes: attorney general opinions interpreting and applying statutory provisions, secondary summaries of and commentaries upon licensure statutes, and responses to a questionnaire survey of the states conducted by the Council of State Governments for the National Center for Health Statistics of the U. S. Public Health Service. (Naturally, the malpractice material was essentially all decisional.) The final report to the Commission constituted an up-to-date all-jurisdiction study of licensure of physicians, osteopaths, dentists and auxiliary dental personnel, professional and practical nurses, physical therapists, clinical laboratory personnel, optometrists and podiatrists, all conjoined with an examination of the effects of malpractice law and new forms of health-care organization upon the rendition of health care. Only a portion of that total report, in somewhat shortened and modified form, is presented below.

If any central focus can be predicated of the whole study, it is this: to what extent does the current legal framework of health care hinder or encourage those innovations which must come to pass if medicine is to keep up with modern needs? More particularly, to what extent does the legal scheme inhibit flexibility in the creation and use of effective health-care manpower? The answers to those questions are, of course, not free from ambiguity and complexity, but it is believed that the following papers contain data without which no answer can even be attempted.