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THE AUSTRALIAN SOCIETY FOR THE ADVANCEMENT OF ANAESTHESIA
AND SEDATION IN DENTISTRY

SEMINAR, SYDNEY, 4 DECEMBER 1982

PROFESSIONS: KEEPING OUR BALANCE

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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REMEMBER THE DINOSAURS

Australia's old established professions are coming under unprecedented scrutiny by Governments, the media, radical movements from within and by the public. The only way they will be able to respond adequately will be by abandoning provincial and parochial attitudes that have, until now, tended to limit the professions to the perspectives of their own States. Professionals in Australia should remember the fate of the dinosaur which became extinct when it grew too large and fat for its environment.

The challenges to the good name and public esteem of the professions in Australia tends to be reinforced by reported cases of malpractice and fraud. Such cases are not confined to solicitors raiding their trust accounts or doctors guilty of fraudulent claims against the National Health Scheme. Dentists too are involved. The recent conviction in England of a Brisbane dentist, Dr. Hugh Hourigan and his jailing for 18 months on charges involving English National Health claims of more than \$500,000, indicates that dentists too could fall victim to greed and unprofessional conduct.¹ When dentists do it, they do it on a grand scale. The figures also show that dentists do it often. There are more health care complaints to consumer bodies to New South Wales about dentists than about any other health care professional.

ATTACKS ON DOCTORS, LAWYERS AND ACCOUNTANTS

In recent weeks claims have been made in the media which tend to further undermine the opinion that has been 'hard won by the devoted work of generations of health care professionals in the past'. For example one could mention:

- * assertions by the Doctors' Reform Society of high rates of unnecessary surgery in Australia²;
- * acknowledgement by the President of the Victorian Medical Board that a lay representative of the Board might boost public confidence that the Board is not 'a closed shop of professionals defending professionals'³;
- * issue of a booklet in November 1982 by the A.M.A. suggesting that doctors and other health workers need to work hard to bridge the cultural and social gaps in their dealings with disadvantaged patients, especially Aboriginals⁴; and
- * the introduction in Victoria of legislation to tackle the problem of doctors referring patients to private hospitals owned by themselves.⁵

It is important not to exaggerate criticisms of the professions. By the same token, every professional with his eyes open can see that his vocation is under unprecedented scrutiny.

Last weekend, a High Court Judge, Mr. Justice Murphy, criticised some aspects of the legal profession. His targets were many. They included unjustifiable monopoly practices, antique dress and horse hair, allegedly colonial attitudes and adherence to obscure and unintelligible drafting.⁶ Other speakers at the same Conference said the legal profession is 'remote, elitist and unresponsive'.⁷ The Doctors Reform Society expose what they claim are excesses in surgery performed by their colleagues and the view that patients are merely '\$2000 worth of removeable organs'. They claim credit for a 7% drop in the number of hysterectomies and a 10% drop on tonsillectomies performed in New South Wales last year.⁸ Accountants have also come in for recent criticism because of the lack of independent and nation-wide standards on such matters as allowance for inflation in company accounts.⁹ Dentists have so far avoided a high profile. But the same forces that are at work in the other professions affect dentists and indeed all modern professionals. Those forces include:

- * higher levels of community education, with consequent questioning of professionals and impatience with condescending or paternalistic answers;
- * a growing faction within each profession which challenges long-established 'rules of the club';
- * a growing interest by governments because of their involvement in funding legal aid, national health servicing, cases of fraud; and

- * a growing general professional acceptance that the old methods of organisation are good for protecting professional interests but not always so effective in upholding the interests of people with legitimate complaints against professionals.

CONTINUING EDUCATION

Another concern that has recently come to the fore is the need for continuing education in all of the professions. In the law, more than 1,000 new Acts of Parliament are passed every year in Australia. These changing aspects of legal practice impose on lawyers the duty to keep up with their law and to attend refresher courses. In the United States, such courses are also frequently provided for judges. In Australia, although there are annual meetings of judges, the systematic updating of the law by refresher courses for the judiciary is minimal. The medical profession and health care professionals do better than lawyers and accountants in continuing professional education. The vast array of medical literature, tapes, video-tapes and other means are evidence of the appreciation of the need, sometimes literally a matter of life and death, to keep up with rapid medical advances.

It is important to take advantage of the new information technology in enhancing patient understanding of treatment so that consent to health care treatment can be based on a good appreciation by the patient of what is to be done and any risks involved. In the United States, increasing numbers of doctors and dentists are using video-tapes to illustrate the nature of the treatment proposed, to detail costs and to provide answers to typical patient questions. In some practices sound recordings are being given to patients to take home, especially where major operative treatment is envisaged. Similar innovations should be considered within dental practice in Australia.

NEED FOR NATIONAL APPROACH

One of the main problems facing professionals in Australia today is that they are regulated virtually exclusively by State laws. This means that their organisation and often their perspectives are limited to State concerns. National professional organisations tend to be weak. In some cases, as in the law, there are significant impediments to professionals moving from some parts of Australia to practice their profession in other parts of Australia. There is a need for a more national approach on the part of the professions if they are to adequately tackle the challenges facing professional people in Australia today and if they are adequately to respond to criticism and to be in a position to point out the good work that is being done by most professional people.

The fragmentation of Australia's professions along State lines was inevitable in 1901. It is a source of weakness and uncertainty in 1982. A recent decision in respect of the accounting profession points the way ahead. This was the decision on 26 November by the Ministerial Council to establish an Accounting Standards Review Board for operation throughout Australia.¹⁰ That Board will lay down accounting standards. The rules by which corporate accounts are prepared will for the first time have the force of law and will operate evenly throughout the whole of Australia. The decision has been welcomed as a means, if properly administered, to improve uniformity, efficiency and modernity in the accounting profession.¹¹ The need for similar initiatives in the other professions is clear. Already lawyers of any State have a legal right to appear before any Federal Court wherever it is sitting in Australia. This will breakdown the 'dingo-proof fences' that sometimes limit lawyers practising in neighbouring States. The human body is the same in all parts of the country. As the result of a report of the Law Reform Commission, legislation on human tissue transplants and the legal definition of 'death' is now being enacted uniformly in all parts of the country.¹² There should be more of this in all of the professions. They must look to their organisation, the laws that govern them, the ways they conduct themselves, their continuing education and their rules on advertising. They should do so increasingly with a national voice. Otherwise, the critics, the sceptics and the doubters only will be heard in the land and the voice of the professions will be unduly muted. The fundamental principles of professionalism are still integrity, objectivity, independence, confidentiality, technical standards, ethical behaviour and community concern.¹³ Most professional people in Australia reach these standards. But if you are to believe only the tales of woe about the professions in the media, you could be forgiven for believing otherwise.

In Australia just now there is far too much negative thinking. Professionals must acknowledge the need for improvement and change. But they should not hesitate to remind the community that most professionals are honest, diligent and able. Let us keep the complaints in perspective. After all, it is we who are here in a professional conference on a sunny day, when the harbour is sparkling.

FOOTNOTES

1. Reported the Australian 25 November 1982, 5.
2. V. Wright, 'What's Really Up Doc?' in the Weekend Australian, 2-3 October 1982, 4. Cf comment by the Australian Medical Association (AMA 5).
3. Comments attributed to Dr. Bernard Neal, the Age, 9 November 1982.
4. S. McIlraith and J. Reid, Booklet on Health Problems of Aboriginies, published by Australian Medical Association, reported the Age, 9 November 1982.
5. The Medical Practitioners Bill 1982 (Vic). See report the Age, 9 September 1982, 15.
6. As reported, Australian Broadcasting Commission, Radio News, 27 November 1982, 7 p.m.
7. Comments of Mr. A. Asher in the Weekend Australian, 27 November 1982, 5.
8. V. Wright, n 2 above.
9. Mr. F. Walker, N.S.W. Attorney General, address to Australian Society of Accountants, Brisbane, as reported Sydney Morning Herald, 28 October 1982, 19.
10. V. Prosser, 'Board must be backed by Law' in the Australian, 24 November 1982, 13.
11. Editorial, The Australian Financial Review, 30 November 1982, 12.
12. The Law Reform Commission, Human Tissue Transplants (ALRC 7) 1977. The proposals of the Commission have been adopted in law in the Australian Capital Territory, the Northern Territory and Queensland. Bills based upon the report are presently before the Parliaments of Victoria and Western Australia. Legislation in New South Wales and South Australia has been foreshadowed.
13. Based on the 'fundamental principles', stated by the International Federation of Accountants, as reported in the Australian, 8 September 1982.