Singapore Journal of Legal Studies
[1992] pp. 183 - 193

LEGISLATION COMMENTS AND LIST

PRIVATE HOSPITALS AND MEDICAL CLINICS ACT[1]

History

THE Private Hospitals and Medical Clinics Bill was introduced into Parliament and read for the first time on 11 December 1979 by the then Minister for Health, Dr. Ton Chin Chye.[2] Although the Bill was eventually passed in 1980[3] ("Act"), it remained dormant in the statute books until it was gazetted in 1991.[4] By this Notification, the Act will come into force on 1 January 1993. There has been no official announcement explaining this unusual second moratorium. The Regulations made under section 17 of the Act had already been made and gazetted.[5]

Objectives of the Act

The long title to the Act reads as follows:

> An Act to provide for the control, licensing and inspection of private hospitals, medical clinics and clinical laboratories, to prohibit trading in human blood and for purposes connected therewith, and to repeal the Nursing Homes and Maternity Homes Registration Act [Chapter 210 of the Revised Edition].

In his speech in Parliament on 26 February 1980, Dr. Toh said:

> The purpose of this Bill is to license the place of practice of physicians and dentists whether they are or are not registered under the Medical Registration Act and Dentists Registration Act. This Bill therefore

---

1 Cap. 248, 1985 Rev. Ed.
2 *Parliamentary Debates*, vol. 39 no. 8, 11 December 1979, col. 522.
3 Act No. 27.
4 G.N. No. 571/1991.
5 G.N. No. 572/1992.

covers premises used by physicians practising traditional medicine and acupuncturists.[6]

He then added that "the Bill also seeks to prohibit the trading in human blood."[7]

This Act will only repeal the Nursing Homes and Maternity Homes Registration Act, and not the two Acts[8] which govern the registration of doctors and dentists respectively. The difference may not be striking, but it is clear that this Act is intended for the registration of "places" and not "persons". Indeed, Dr. Toh in his speech in the Select Committee's hearing, said that the Act "has got nothing to do with practitioners at all."[9] With this in mind, it is difficult to accept the logic of some of Dr. Toh's comments that the Bill was intended to curb the activities of persons carrying on suspect medical or pseudomedical practice such as the sanatronics scheme. He voiced the conern that practitioners of such schemes (as well as the traditional *sinsehs)* are not regulated.[10] If that was the concern, the simple solution would have been to exempt practitioners who are registered under the Medical Registration Act and Dentists Registration Act from this Act. Furthermore, the Western trained doctors generally felt that they should not be classified with *sinsehs.* As a gesture of compromise the Singapore Medical Association called for separate registers to be kept.[11] Dr. Toh, as chairman of the Select Committee, agreed that separate registers could be kept.[12] However, section 7 of the Act only refers to the keeping of a single register.[13]

Scope

The Act applies to private hospitals, medical clinics, and laboratories. The term "private hospital" in the Act, has been defined to exclude Government hospitals and the National University Hospital.[14] A Government re-structured hospital such as the Singapore General Hospital is subject to the Act because

6 *Parliamentary Debates,* vol. 39, 26 February 1980, col. 560.

7 *Ibid.*, at col. 564.

8 Medical Registration Act, Cap. 174, 1985 Rev. Ed.; and Dentists Act, Cap. 76, 1985 Rev. Ed.

9 *Ibid.*, at B3.

10 See, *Report of the Select Committee on the Private Hospitals and Medical Clinics Bill,* at B6.

11 *Ibid.*, at A7.

12 *Ibid.*, at B3.

13 S. 7 reads: "The Director shall cause to be kept and maintained a register of all licensed private hospitals, medical clinics and clinical laboratories."

14 S. 2 reads: "... private hospital means any premises (other than a Government hospital or a hospital maintained by the National University of Singapore) used or intended to be used for the reception, lodging and treatment and care of persons who require medical treatment or suffer from any disease, and includes a maternity home and a nursing home."

its employees are employees of a private limited company (the Singapore General Hospital Private Limited) and not the Public Service Commission. The Act classifies private hospitals into eight categories, namely (1) a maternity hospital, (2) a medical hospital, (3) a surgical hospital, (4) a psychiatric hospital, (5) a convalescent hospital, (6) a children's hospital, (7) a combination hospital of any two or more of the preceding categories, and (8) any other kind of hospital so gazetted by the Minister.[15]

Medical clinics required to be licensed are defined as:

> ... any premises used or intended to be used by a medical practitioner, a dentist or any other person[16] - (a) for the diagnosis or treatment of persons suffering from, or believed to be suffering from, any disease, injury or disability of mind or body; or (b) for curing or alleviating any abnormal condition of the human body by the application of any apparatus, equipment, instrument or device requiring the use of electricity, heat or light, but does not include any such premises - (i) which are maintained by the Government or the National University of Singapore; or (ii) which form part of the premises of a licensed private hospital.[17]

This definition which includes "or any other person" is clearly intended to apply to persons such as acupuncturists or practitioners of traditional medicine.[18] The definition is wide enough to cover even "faith healers". It should also be noted that the Act applies to such premises as defined in section 2 irrespective of whether the use was for only one occasion or whether usage was continuous as in the course of a business.

The definition of the third kind of premises covered by the Act, namely "clinical laboratory" is also very wide. Such premises are defined as:

> ... any premises intended to be used for any type of examination of the human body or of any matter derived therefrom for the purpose of providing information for the diagnosis, prevention or treatment of any disease or for the assessment of the health of any person, or for ascertaining the cause of death or the result of any medical or surgical treatment given to any person, but does not include any such

---

15 S. 6(1) of the Act.

16 It is interesting to note that the Act defines a medical practitioner and a dentist as a person who is registered under the Medical Registration Act and the Dentists Registration Act respectively, but there is no definition of "other person". This naturally means that literally, any person other than a medical practitioner or dentist.

17 S. 2 of the Act.

18 This was the stated object of the Bill when it was introduced in Parliament in 1979. See *supra*, note 2.

> premises - (a) which are maintained by the Government or the National University of Singapore; (b) which form part of the premises of a licensed private hospital; or (c) which are maintained by a medical practitioner or dentist as part of his medical clinic for the exclusive use of his practice.

It appears that a literal reading of this definition will apply to any health club which examines a member's body for the purpose of assessing his health and charting the type of exercise programme suitable to that member.[19] It will take the application of the golden rule of interpretation to exclude such clubs from the ambit of the Act.[20] What is unclear in this definition is the phrase "part of the premises of a licensed hospital". Does this mean that if the laboratory is within the physical premises owned by a licensed private hospital it is exempted from obtaining a licence even though the laboratory does not belong to the hospital, but another company that had leased that part of the premises from the hospital?[21] Furthermore, it is not clear whether this definition applies to premises owned by the hospital at locations outside the hospital grounds. Hence, if a hospital has three laboratories, two of which are at different locations from the hospital, how many licences must the hospital obtain? It is also interesting to note that in the case of a laboratory maintained by a medical practitioner, there is no requirement that it must be at the premises of his medical clinic. Does the rule *expressio unius est exclusio alterius* apply?[22]

Some confusion may also arise from the possible overlap between the definition of the clinical laboratory and a medical clinic. If, for example, a medical practitioner (specialising in radiology) has a clinic in which he performs diagnostic radiological services not only for his own patients but also patients referred to him by other medical practitioners for the purpose only of getting radiological diagnosis, can it be said that he is maintaining the premises "for the exclusive use of his practice"? If the answer is in the negative, then he should register his clinic as a laboratory[23] and not as a medical clinic. There are strong grounds for regarding this sort of clinics as laboratories because the phrase "for the exclusive use of his practice" should be given a restrictive meaning, otherwise paragraph (c) of the definition of "clinical laboratory" would have been worded as, "which are maintained by a medical practitioner". It may also be Parliament's intention to limit

---

19 "... any type of examination of the human body ... for the purpose of providing information ... for the assessment of the health of any person."

20 See *Becke* v. *Smith* (1836) 2 M. & W. 191 at 195.

21 It is important to note that the definition refers to premises of a hospital and not premises "owned" by a hospital.

22 See *Re The Glider Standard Austria S.H. 1964* [1965] P. 463.

23 Whereby Part IV of the Regulations pursuant to the Private Hospital and Medical Clinics Act will apply. See G.N. No. S72/1992.

exception (c) to laboratories maintained by medical practitioners in the practice of mainline medical practice, namely diagnosis and treatment. Hence, conversely, a purely clinical laboratory such as a diagnostic radiology clinic must be licensed as a clinical laboratory even though it is used exclusively by the medical practitioner who maintains it.[24]

The Licence

The thrust of the Act is that no premises may be used as a private hospital, medical clinic or clinical laboratory unless it is licensed under section 4(1) of the Act. This subsection is interesting in that it provides that the licence may be issued with terms and conditions attached. Hence, such premises are regulated by the Act and its regulations,[25] guidelines,[26] and also the terms and conditions of the licence.[27] Regulation 54 of the Regulations refer to "directions" issued by the Director. There is no definition of this term and it appears to be additional imperatives which the Director may impose.

Where there is a breach of the licensing requirement the penalty is borne by "every person having the management or control" of the premises. The use of the word "every" as opposed to the word "the" in qualifying a person having management and control is clearly intended to apply to partners having the management of the premises. However, in the case of a private company, it may mean that not only will the executive director be liable, but also the entire board of directors. Furthermore, it is wide enough to apply to a manager who is not the executive chief but whose portfolio includes the obtaining of the licence under the Act. It should be noted that the penalty applies not only in a situation where there is a failure to obtain a licence, but also in operating the premises contrary to the terms and conditions of the licence.[28]

Section 5(2) provides that "upon the receipt of an application, the Director[29] may issue a licence subject to such terms and conditions as he may think fit to impose". There are two discretionary elements in this provision. First, the Director may choose not to issue the licence. He need not give reasons because there is no general duty at common law (and none is imposed under

---

24 There is no definition of the word "maintain" in exception (c). It may mean "ownership" or "management", or both, or either.

25 S. 17.

26 Reg. 4, The Private Hospitals And Medical Clinics Regulations 1991.

27 See *Chertsey Urban District Council* v. *Mixnam Properties Ltd.* [1965] A.C. 735 where the House of Lords held that the local authority concerned could not impose terms and conditions relating to the licensee's right to contract with third parties, but only in respect of the use of the land by the licensee.

28 S. 4(2).

29 Defined in s. 2 as the "Director of Medical Services".

the Act) that reasons must be given for administrative decisions.[30] However, in *Minister of National Revenue* v. *Wrights' Canadian Ropes Ltd.*, the Privy Council held that the courts are entitled to examine the facts upon which a tribunal makes its decision, and if there is nothing to justify the decision, it is entitled to assume that the decision was made arbitrarily and be held invalid.[31] Furthermore, discretionary power cannot be exercised pursuant to an adopted policy or rule that allows the decision-maker to dispose of a case or application without any consideration of the merits of the individual application.[32] The second discretionary element concerns the imposition of terms and conditions attaching to the licence. It is hard to conceive what kind of terms and conditions would be imposed, but section 6(5) gives a hint of this by providing that a licensee may apply for a variation of the terms and conditions and the director may so vary "in such manner as he thinks fit, the kind of private hospital for which the licence is in force, or the purpose or purposes for which the hospital is maintained."[33]

The Act provides three instances in which the Director may refuse a licence to an applicant.[34] First, he may refuse a licence if he is not satisfied as to the "character and fitness" of the applicant to be a licensee of a private hospital, and in the case of a corporate applicant, the character and fitness of "the members of the board of Directors or other governing body;" secondly, if the premises are "unclean or insanitary, or inadequately equipped";[35] and thirdly, if the Director is of the opinion that the "nursing or other staff is inadequate. The discretion given to the Director in these instances is incredibly wide. There is no base minimum standard, and because each hospital differs in size, function and emphasis, what is adequate for one hospital may not be so for another and vice versa. There is also no base standard as to what constitutes adequate equipment. So far as character and fitness of the applicant or members of the governing body of the applicants is concerned, there appears to be little guidance. In the case of a medical practitioner the effect of a refusal to grant a licence under section 5(3) is more significant. Although a medical practitioner must be of suitable character and fitness before he can be registered under the Medical Registration Act and be allowed to practice, he may, nevertheless, be forced to be an employee of someone else and not set up his own practice if his premises

---

30 *Minister of National Revenue* \. *Wrights' Canadian Ropes Ltd.* [1947] A.C. 109.

31 See also *Padfield* v. *Minister of Agriculture, Fisheries and Food* [1968] A.C. 997.

32 *R.* v. *London County Council, ex pane Corrie* [1918] 1 K.B. 68; *British Oxygen Co. Ltd.* v. *Board of Trade* [1971] A.C. 610.

33 See *supra*, note 30.

34 S. 5(3) of the Act.

35 There is a highly subjective element in the definition of the scope of this phrase. Furthermore, it depends on whether the type and class of hospital or clinic is taken as a factor to be considered because what may be described as inadequate in respect of a major hospital may be described as adequate for the purposes of a minor hospital.

is deemed by the Director to be unclean or insanitary.[36] It follows that in his lease agreement, a medical practitioner should guard against the possibility of having his licence withdrawn and insist on, at least, a clause in the lease agreement permitting assignment or a right to sublet.

Revocation and Suspension

A licence may be suspended or revoked on any of the three grounds set out in section 5(3), or a failure to comply with a stop order under section 11[37] or in the public interest, or where the hospital, clinic or laboratory has ceased to operate as such. Before an order of suspension or revocation is imposed, the licensee shall be given an opportunity to show cause why his licence should not be suspended or revoked. There is no provision in the Act for the licensee to be represented by a lawyer. However, at common law the position is that although there is no automatic right to legal representation, in serious cases, the person ordered to show cause should be allowed legal representation.[38] In any event, the Director must consider any application for legal representation and not adopt a policy that there will be no legal representation whatsoever.[39] In cases involving the forfeiture of licence by a licensing authority the English courts have held that the licensee is entitled to an unbiased tribunal.[40]

Appeal

The Act provides that anyone who is dissatisfied with a decision of the director in respect of his refusal to grant a licence under section 5(3) or his order for a suspension or revocation of a licence may appeal to "the Minister whose decision shall be final".[41] This does not mean that there is no redress beyond the Minister. Although there is no further appeal against the Minister's decision, such provisions do not oust the jurisdiction of the High Court, which still retains the power of judicial review.[42] In *R. \. Medical Appeal Tribunal, ex parte Gilmore,* Denning L.J. (as he then was) said that the word "final" is not enough. That only means "without appeal". It does not mean "without recourse to certiorari". It makes the decision final on

---

36 See s. 5(3).

37 This stop order can include prohibiting or stopping the hospital, clinic or laboratory from continuing to use any apparatus or equipment which in the opinion of the Director or his agent is dangerous or detrimental to any person.

38 See ***Maynard*** v. *Osmond* [1977] Q.B. 252.

39 ***Ibid.***, at 256.

40 ***McInnes*** v. ***Onslow-Fane*** [1978] 1 W.L.R. 1520.

41 S. 9(1).

42 ***Pearlman*** v. *Keepers and Governors of Harrow School* [1979] Q.B. *56; **Anisminic** Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

the facts but not final on the law.[43] The Act has placed a number of matters to be dealt with by the Director "in his discretion",[44] "as he thinks fit",[45] and in his "opinion".[46] The courts have, in the modern day application of administrative law principles, subjected such clauses to the process of judicial review.[47] In considering the ambit of the power given by statute to a Governor[48] Lord Ratcliffe in the Privy Council said: "Parliament has chosen to say explicitly that [the Governor] shall do whatever things he may deem necessary and advisable. That does not allow him to do whatever he may feel inclined, for what he does must be capable of being related to one of the prescribed purposes."[49]

In any event, before the Minister exercises his powers under sections 5(3) or 8(1) he is obliged to refer the matter to an advisory committee consisting of either three members of the Medical Council or three Members of the Dental Board in appeals by a medical practitioner and dentist respectively. There is no provision for reference to any committee in appeals by a private hospital or clinical laboratory.[50]

Apparatus and Equipment

The Act empowers the Director to order the licensee to stop using any "apparatus, appliance, equipment or instrument" if he is of the opinion these are "dangerous or detrimental to any person" or is "otherwise unsuitable for the purpose".[51] It is not clear whether the Director will prohibit a medical practitioner from using acupuncture equipment on the ground that these are unsuitable for the purpose of a western trained medical practitioner. It may be difficult to justify the exclusion of such equipment when traditional acupuncturists are permitted to use them with no proof of proper training. If the point is that a western trained medical practitioner does not possess the skills of an acupuncturist, that would be a different issue, but there is no basis for comparison as there is no examination board which can verify the skills of acupuncturists and other practitioners of traditional medicine.

---

43 [1957] 1 Q.B. 574 at 583.
44 S. 5(2).
45 S. 6(5).
46 S. 8(1)(c).
47 *Nakkuda AH* v. *Jayaratne* [1951] A.C. 66
48 To make such rules and regulations as "he may consider necessary".
49 [1952] A.C. 427 at 450; *cf. Liversidge* v. *Anderson* [1942] A.C. 206.
50 In this respect it should be noted that Article 12(1) of the Constitution of the Republic of Singapore provides that "all persons are equal before the law and entitled to the equal protection of the law." Furthermore, s. 2 of the Interpretation Act (Cap. 1, 1985 Rev. Ed.) defines "person" as including any company or body corporate.
51 S. 11(1).

The Director is also empowered to order a licensee to install or replace such apparatus, equipment, appliance or instrument as he may specify.[52] The power to order the installation of an apparatus which the licensee does not possess may be sparingly used as such an order may upset the delicate balancing of a licensee's budget, especially if his licence was approved and granted without the requirement of having to install the said apparatus. This power thus goes much further than the power to merely stopping the use of a particular apparatus.[53]

Disclosure of Information

The Act makes two provisions in respect of the disclosure of information. The first relates to the duty of the licensee to furnish certain types of information which the Director may require.[54] The second creates an offence in respect of any unofficial disclosure of information obtained by or given to a person pursuant to the Act.[55]

Sale and Purchase of Blood

By a solitary provision, the Act prohibits the sale and purchase of blood, and it creates an offence not only for the seller but also the purchaser. In the Act, the offence also includes an offer to sell or buy blood.[56]

Penal Provisions

If a private hospital, medical clinic, or clinical laboratory is not licensed or operated contrary to the terms and conditions attached to the licence, "every person having the management or control" of the premises is guilty of an offence punishable with a fine of up to $5,000 or jail up to two years or both.[57] This will generally apply to the person who owns or manages the premises, or in the case of a breach of the terms and conditions of a licence, the licensee.[58]

If the premises are used for a purpose other than the designated purpose (for example, using a medical clinic as a clinical laboratory) the licensee

---

52 S. 11(2).

53 Even this may cause financial hardship as the apparatus will become a "white elephant" unless it can be sold.

54 S. 12(1).

55 S. 16.

56 S. 3.

57 S. 4(1).

58 The Act also creates an offence of selling or purchasing "the right to take blood from another person."

and the person having the management of the premises shall be guilty of an offence and may be fined up to $5,000 or jailed up to two years or both.[59]

The offence of selling or purchasing blood, or selling or purchasing the right to take blood from the body of another person carries a penalty of a fine up to $5,000 or jail up to one year or both.

Any person who prevents or obstructs any person authorised by the Director under section 10 from inspecting licensed premises or premises suspected to be unlicensed, or the equipment, apparatus, appliance, or books and records relating to the private hospital, medical clinic or clinical laboratory to be inspected, is guilty of an offence and may be fined up to $2,000 or jailed up to one year or both.[60]

A licensee who fails to furnish any information required by the Director, or who furnishes false or misleading information shall be guilty of an offence and may be fined up to $1,000.[61]

Any person who discloses to another information which he obtains by virtue of this Act commits an offence unless the disclosure was in the course of his duty, and he may be fined up to $2,000.[62]

Finally, anyone who contravenes or fails to comply with the regulations or directions issued by the director may be fined up to $2,000 or jailed up to one to twelve months or both.[63]

Conclusion

There is clearly a great need for the tighter regulation of private hospitals, clinical laboratories and medical clinics. This Act should be welcomed as a step in the right direction. However, its long hiatus on the shelf has the result of robbing it of contemporaneity. While it is still useful as the vehicle in which the health authority can check "mad scientists" and medical eccentrics such as Dr. Kevorkian[64] and Dr. Jacobson,[65] the Act, however, still does not address the issue of the sharing of profits by medical practitioners with non-medical practitioners.[66] It has not set out how traditional medical practitioners such as acupuncturists, *sinsehs* and reflexologists are to be

---

59 S. 6(4).
60 S. 10(2).
61 S. 12(2).
62 S. 16.
63 Reg. 54.
64 He became famous for inventing the suicide machine for his patients.
65 He became famous for inseminating his female patients with his own sperms without their knowledge. See *The Straits Times*, 6 March 1992.
66 In cases where the medical clinic is a private limited company with medical as well as non-medical shareholders.

qualified and controlled. Some of its definitions of basic concepts such as "clinical laboratory" are at once too wide or inadequate and, consequently, appear vague and out-of-date. Perhaps, when the teething problems of this massive and landmark legislation have been cleared, a revised edition will see some necessary refinement.

CHOO HAN TECK*

---

* LL.B. (Sing.), LL.M (Cantab.), Advocate & Solicitor, Dip. Trial Adv. NITA (Harvard), (Singapore).