

# Will Medicine Be Strangled in Law?

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In winning Dr. Kenneth C. Edelin's manslaughter conviction for performing an abortion, the forces opposed to the historic Supreme Court decision of two years ago may have won a battle but lost the war. Certainly the Edelin verdict has produced a national wave of anger that has turned that young physician into something of a hero.

But the full significance of the Supreme Court's abortion ruling and of the counterattack represented by the prosecution of Dr. Edelin goes far beyond just this one medical procedure.

What has been proved in the abortion area is that it is possible to get public, legislative and judicial support for widening the area of freedom and discretion in doctor-patient relationships. And this has happened in a period when the great tide has seemed to be just the reverse, a flood of laws, bureaucratic ordinances, and judicial decisions tending to restrict ever more greatly the freedom in this area.

More laws involving medicine have been passed this last decade than in all of the rest of United States history before 1965. Through Medicare, Medicaid and other programs, the Government pays for an ever-increasing portion of all medical care in this country, and it is increasingly demanding the right to control what it is paying for.

Simultaneously, however, Government is increasing the stringency of its controls over all branches of medical care, regardless of who pays for it.

Last May, speaking to the new graduates of the University of Rochester's School of Medicine and Dentistry, the university's Chancellor, Dr. W. Allen Wallis, sketched the 1984-type vision he saw ahead for the new physicians and dentists:

"You may find lawyers defining the range of treatments that you are allowed to use in specified circumstances. Lawyers may prescribe the criteria by which you are to choose among the allowable treatments. Lawyers may specify the priorities you must assign to different patients. Lawyers may require you to keep detailed records to establish at all times that you are in full compliance. Lawyers may punish you unless you can refute beyond a reasonable doubt their presumption that your failures result from not following all of their regulations and requirements."

It is less than a year since Chancellor Wallis made that forecast, but the passage of time has only strengthened the probability that he is right.

The justification for these governmental interventions is the alleged desire to protect people or to achieve seemingly positive ends such as better cost control and increased efficiency. And from time to time there are spectacular scandals such as the current nursing home mess which shows what can happen when Government funds gush forth bountifully with virtually no check at all on how they are used.

But what is becoming glaringly evident is that the proliferation of controls and safeguards in the medical area threatens the very possibility of even conducting medical care as we have hitherto known it. One reason is the incredible complexity of the medical system, and the inability of legislators and bureaucrats alike to foresee the consequences of their interventions. Another reason is simple ignorance, and more than one law is on the statute books now that would not be there if the legislators had really known what they were doing.

Two out of many possible examples may illustrate the ignorance of legislators in the health area.

A few years ago there was a wave of legislative action to do something about sickle-cell anemia, a disease primarily affecting blacks. In the event, it turned out that the Government-ordered and Government-financed screening of black children and black adults for the sickle-cell trait was producing many harmful results for the intended beneficiaries, and contributing little if anything to their welfare.

Then there was the bill passed in late 1973 designed to subsidize and otherwise promote the formation of so-called Health Maintenance Organizations. Now many leaders in that movement believe the bill to help them turned out to be a severe deterrent to their growth because the legislators simply did not understand what they were doing.

Chancellor Wallis ended his message to the young physicians and dentists last May on a note of hope: "The lawyers have you outnumbered," he declared, "but on the average they are no match for you in intelligence or dedication. Just don't let them ambush you while you are absorbed in caring for the sick."

But perhaps the Supreme Court decision on abortion and the negative public reaction to Dr. Edelin's conviction provide a more concrete ground for optimism that growing bureaucracy and regulation need not strangle doctor-patient relations. The Supreme Court declared two years ago after all that at least in the early months of pregnancy abortion is a matter for decision simply between each patient and her doctor. Who knows? Perhaps some day other phases of medical care will regain that same old freedom.

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