Statutory Wills and Testamentary Capacity

The Court of Protection exercises jurisdiction over the property of patients suffering from mental disorder. It has always been able to authorize the execution of a settlement of a patient's property by the receiver on the patient's behalf but until this year it has not had power to authorize the execution of a will on behalf of a patient. Now, by Part III of the Administration of Justice Act, 1969, which amends S.103 of the Mental Health Act, 1959, the Court is given this power. There is every indication that this new jurisdiction will be widely invoked.

Before exercising this jurisdiction the Court must have reason to believe that the patient is not capable of making a valid will for himself—that is to say that he lacks testamentary capacity. The Court will require evidence to this effect from a medical practitioner, who will be expected to give reasons for his conclusion. In many cases the Court will request a special visit by one of the Lord Chancellor's visitors.

One matter which will require careful consideration is whether a person for whom a will has been made under the statute mentioned above should be told of its execution and of its terms. Sometimes the answer will be obvious. If a patient is so demented as to be incapable of understanding the nature of a will, no good will be done by informing him of it. If he has understanding, he will probably have been consulted when the terms of the proposed will were being considered and should obviously be fully informed of the outcome of the proposals. The general rule must be that a patient capable of understanding the nature of a will should be given full information unless, in his own interests, there is some overriding reason why he should not be informed. One such reason would be that the knowledge of what has been done would so upset him as to be injurious to his health. Not infrequently a patient suffers from a delusion that his wife is unfair to him; in such a case one might well hesitate before telling him that a statutory will has been made under which she takes a substantial interest. If and when he recovers the management of his affairs he must certainly be told.

In this context it may be permissible to add some general observations on testamentary capacity.

Testamentary Capacity

For a will to be valid the testator must be possessed of testamentary capacity when he executes it. Many lawyers, and even some doctors, are hazy as to the precise meaning of this expression. The legal conception of testamentary capacity can be put in a nutshell by saying that the testator must be possessed of a sound disposing mind, but, as a judge once said in a different context, it is easier to put the law in a nutshell than to keep it there.

Testamentary capacity has been said to comprise three elements: an understanding of the nature of a will, a knowledge of the property to be disposed of, and an ability to recognize those who may have moral claims on the testator's bounty. Whenever a doctor's advice is sought he should give separate consideration to each of these elements. Some persons seem to think that if a testator knows what a will is and knows what he wants to do nothing more is required, and it is therefore essential to bear in mind that there are two other necessary elements.

(1) Most patients, even though suffering from mental disorder or subnormality, seem to understand the nature of a will; that is to say, that it is a document which disposes of property on the death of the testator and which can be revoked at any time before death.

(2) That a testator ought to have some knowledge of what he is disposing of would seem to be obvious, but how precise that knowledge need be depends on the circumstances of each case. He must not suffer from a pathological delusion that he is a pauper when he is in fact rich, or vice versa, but he is not expected to remember his property in detail or to know its precise value. Indeed, it will often happen that the solicitor intends to give the testator the necessary information about his property after receiving the doctor's report. What the doctor is really concerned to satisfy himself about is whether the testator has sufficient capacity to appreciate the extent of his property and to make a sensible disposition of it. If he has this capacity but lacks information, the report should be to that effect.

Questions relating to "subnormals" give rise to difficulties. Many such persons are quite incapable of comprehending money values and accordingly are incapable either of appreciating their own fortune or of assessing the financial needs of others. It can rarely happen that such a person is possessed of testamentary capacity. With very few exceptions, the most intelligent man is not considered by the legislature fit to make a will until he attains his majority (now the age of 18) and it would be strange if a subnormal is to be regarded as more highly qualified as a testator than the youth who, though still an infant at law, well understands the value of money.

The medical practitioner should always insist on being instructed as to the extent of his patient's property before advising on testamentary capacity.

(3) Ability to recognize those having claims on the testator's bounty rules out those who, through some disturbance of mind, have a morbid antipathy to some person for whom the testator ought to provide. To inquire into this aspect of testamentary capacity it is essential that the doctor be given information as to the testator's relations and so forth and the doctor should insist on being so informed before the examination.

The medical practitioner should remember that testamentary capacity is partly a question of law and partly a medical question. If the examination leaves him in doubt he should report as to the testator's state of mind and leave it to the lawyers to decide the legal effect of that report.

Attestation

Finally, a word may be said as to attestation of wills by medical practitioners. If a solicitor has doubts about a testator's capacity he will often request a doctor to be one of the attesting witnesses. Lawyers assume that a doctor will not attest a will unless he is reasonably satisfied of the testator's capacity, and if the validity of the will is subsequently called in question the fact that it was attested by a doctor will carry considerable weight with the judge. Accordingly a doctor should always bear in mind, when asked to be an attesting witness, that by so doing he is to some extent vouching the capacity of the testator. Instances have come to the notice of the writer where medical practitioners have light-heartedly attested wills and have subsequently acknowledged that they were satisfied the testator was not then of testamentary capacity.

RAYMOND JENNINGS, Q.C.,
Master of the Court of Protection.

REFERENCE

1 Banks v. Goodfellow L.R. 5 Q.B. 549.
MEDICAL MEMBERS OF PARLIAMENT

Thirty-seven doctors stood as candidates in the recent general election and the following twelve were successful:

Dr. R. F. B. BENNETT (Con., Gosport and Fareham). Born in 1911, Dr. Bennett qualified from St. George's Hospital in 1937, and also studied at the Institute of Psychiatry, London. He has represented his constituency since 1950, and was P.P.S. to Sir David Maxwell-Fyfe, 1951-4, to Mr. Geoffrey Lloyd until 1956, and to Mr. Iain Macleod, 1956-63.

Sir ALFRED BROUGHTON (Lab., Batley and Morley). Born in 1902, Sir Alfred qualified from the London Hospital in 1929, and obtained the D.P.M. in 1936 and the D.P.H. in 1937. He has represented his constituency since 1949 and has been a member of the Speaker's Panel of Chairmen since 1964. He was Knighted in 1969.

Mr. J. D. CRONIN (Lab., Loughborough). Born in 1916, Mr. Cronin, an orthopaedic surgeon, qualified from St. Bartholomew's Hospital in 1939. He has represented his constituency since 1955, and is an adviser on industrial injuries to several trades unions. He was a member of the London County Council, 1951-4, and was Opposition Whip, 1959-62.

Dr. A. J. GLYN (Con., Windsor). Born in 1918, Dr. Glyn, who qualified from St. George's Hospital in 1948, is also a barrister-at-law. From 1959-64 he represented the Clapham Division of Wandsworth, having given up medical practice on election to Parliament.

Dr. J. DICKSON MAISON (Lab. and Co-op., Greenock). Born in 1925, Mr. Mabon qualified at Glasgow in 1944. He has represented his constituency since 1955, and from 1964 to January 1967 he was Joint Parliamentary Under-Secretary of State for Scotland. Since then he has been Minister of State, Scottish Office.

Dr. M. S. MILLER (Lab., Glasgow, Kelvinvogue). Born in 1920, Dr. Miller qualified at Glasgow in 1944. He has represented his constituency since 1964 and is a Justice of the Peace of the City. He was P.P.S. to Mr. George Thomson, March 1967-October 1968, and from then until October 1969 he was Assistant Government Whip.

Dr. D. A. L. OWEN (Lab., Plymouth, Sutton). Born in 1938, Dr. Owen qualified from St. Thomas's Hospital in 1962. He has represented his constituency since 1966, and from January 1967 until July 1968 he was P.P.S. to Mr. G. Reynolds. Since then he has been Parliamentary Under-Secretary of State for Defence, Royal Navy.

Sir MALCOLM STODDART-SCOTT (Con., Ripon). Born in 1901, Sir Malcolm qualified at Leeds in 1926. From 1945-50 he represented Pudsey and Otley, and since then his present constituency. He has served on many Conservative and all-party Parliamentary Committees on medical and health matters. He was knighted in 1957.

Dr. I. T. STUTTAFORD (Con., Norwich, South). Born in 1931, Dr. Stuttaford qualified from the West London Hospital in 1959. He has been in general practice for about ten years and for the last four has practised in Norwich.

Dr. SHIRLEY SUMMERSKILL (Lab., Halifax). Born in 1931, Dr. Summerskill qualified from St. Thomas's Hospital in 1958. She has represented her constituency since 1964, and is vice-chairman of the Labour Party Parliamentary Health Group.

Dr. J. A. P. TRAFFORD (Con., the Wrekin). Born in 1932, Dr. Trafford qualified from Guy's Hospital in 1957. He is a consultant physician and also a director of several business concerns.

Dr. G. F. VAUGHAN (Con., Reading). Born in 1923, Dr. Vaughan qualified from Guy's Hospital in 1947. A consultant psychiatrist, he is a Greater London Councillor and since 1968 has been chairman of the G.L.C. Strategic Planning Committee. In the 1955 general election he was the candidate for Poplar.

The following twenty-five medical candidates were not elected:

1. J. T. Hart (Aberavon), A. T. M. Wilson (Aberdare), R. C. Webster (Accrington), M. Haydon-Balile (Bassetlaw), I. N. Samuel (Battersea, South), J. A. Williams (Caernarvon), D. J. L. Hughes (Cardiff, West), M. P. Winstanley (Cheadle), R. J. Madeley (Chelsea), D. Pitt (Clapham, Wandsworth), R. Nixon (Down, North), A. D. Oliver (Edinburgh, Central), D. J. D. Stevenson (Edinburgh, South), T. E. T. Weston (Enfield, East), J. E. O. Dunwoodie (Falmouth and Camborne), H. H. B. Lamb (Kidderminster), J. C. Lees (Kirkcaldy), W. A. Clark (London and Westminster, Cities of), P. H. Boyle (Newcastle-under-Lyme), J. L. Firth (Orkney and Shetland), E. P. Cadbury (Oswestry), J. McKee (South Shields), R. D. McIntyre (Stirlingshire, West), C. A. Unsworth (Westhoughton), W. G. McKay (Whitehaven).

Acknowledgements

The photographs of Sir Alfred Broughton, Dr. Mabon, Dr. Miller, Dr. Owen, and Dr. Summerskill are by The Times; Mr. Cronin and Sir Malcolm Stoddart-Scott by Camera Press; Dr. Bennett and Dr. Glyn by Fayer; Dr. Trafford by Geoffrey Harper, Dr. G. F. Vaughan by Universal Pictorial Press.
EPIDEMIOLOGY

Dysentery

These notes are based on reports to the Public Health Laboratory Service from public health and hospital laboratories in the United Kingdom and Republic of Eire for the week ending 12 June.

The number of isolations of Shigella sonnet and of Shigella flexneri reported by laboratories includes only cases and excretors who have been investigated and probably greatly underestimates the actual number of infections. Notifications of dysentery recorded in the Registrar General's returns may include a variety of diarrhoea syndromes, not necessarily supported by isolation of shigellae. Thus neither figure is an accurate measure of the incidence of dysentery, but experience shows that they follow similar trends from season to season and from year to year, and both provide a general guide to the amount of illness due to these organisms.

The peak prevalence of dysentery is usually in the late winter or early spring and about 98% of shigellae infections in England and Wales are due to S. sonnet. The number of isolations of S. sonnet reported in the first 20 weeks of this year was much fewer than in the corresponding periods of the last three years (see Table). Notifications of dysentery show a similar picture. The amount of flexner dysentery, however, has been about average.

Outbreaks in two schools due to a strain of S. sonnet that spread with unusual vigour have recently been reported. The outbreak in School A began when four children in one of five forms in a primary school of 187 pupils were absent on one day with diarrhoea. During the day five more children were ill with diarrhoea at school. On the assumption that this was dysentery, regular supervised hand-rinsing in 1:30 benzalkonium chloride, and other hygienic measures, were immediately instituted. During the next four days S. sonnet was isolated from the stools of 57 children who attended the school. About a week later term ended; by this time 52 of the 187 children had been ill. Infection had also spread to four other schools, involving 19 children, most of whom were contacts of infected families from School A. Hand-rinsing was begun in the junior departments of these other schools, and no further spread occurred. Altogether S. sonnet was isolated from 136 persons (29 adults, 23 preschool children, and 74 school children) in 62 families. Most children at School A lived on a housing estate, where in some families hygiene is poor and children are in frequent close social contact. Many cases probably resulted from spread through social contacts outside school.

It was thought that this outbreak began with a boy aged 7 who was away from school with a "bad attack" of diarrhoea about three weeks before the main outbreak. After the outbreak began he was shown to School A by S. sonnet, and he has continued to do so. His personal hygiene was below average.

Three weeks after the beginning of the summer term nine of 108 pupils in another primary school and six of the primary school’s school staff, absent with diarrhoea, and the hand-rinsing regime was started. Three days later 30 children were away with diarrhoea; 14 of these children in 12 families were excreting the epidemic strain of S. sonnet. Altogether 23 families were involved in the outbreak. The environment and family hygiene were similar to those of School A pupils, and almost all members of these families became infected.

This outbreak apparently began with one child of a family of four who all attended the school. The child was away with diarrhoea for four days in the second week of term, and on his return to school he was sent home again because he still had diarrhoea. His three siblings continued to attend school. This family had had social contact with a family of seven from School A, four of whom were at some time excreting S. sonnet.

All the strains isolated were resistant to sulphonamides, neomycin, and ampicillin and sensitive to tetracycline and nalidixic acid; most were sensitive to streptomycin. Representative strains that were typed were colicine type 4.

In investigating the outbreak at least twelve professional food handlers who had infected home contacts were found, and three were themselves excreting the organism. But for thorough investigations which detected these persons and suitable control measures the outbreak might have been more extensive. Children who were excreting the organism were excluded from school until they had had a negative stool. Treatment with nalidixic acid or streptomycin was given to families of food handlers, problem families, and individual children on clinical grounds. Very few new infections were observed at the two schools after hand-rinsing was started, but many infections continued to arise in the home environment.

Isolations of Shigella sonnet and Shigella flexneri, England and Wales

| Date        | This Year | Corresponding Periods |
|-------------|-----------|-----------------------|
| 30 Jan. 1970| 741       | 1,645 1,071 1,771     |
| 27 Feb.     | 1,286     | 3,132 1,554 3,092     |
| 27 March    | 1,426     | 2,879 1,827           |
| 24 April    | 810       | 2,674 2,022 1,634     |
| 22 May      | 1,021     | 2,247 1,998 3,030     |
| Total       | 5,106     | 12,671 8,872 12,469   |

S. flexneri

| Date        | This Year | Corresponding Periods |
|-------------|-----------|-----------------------|
| 30 Jan. 1970| 27        | 604 19 39             |
| 27 Feb.     | 28        | 63 18 40              |
| 27 March    | 33        | 67 27 32              |
| 24 April    | 47        | 67 24 28              |
| 22 May      | 30        | 70 18 32              |
| Total       | 170       | 236 134 185           |

New Secretary of State

Sir Keith Joseph has been appointed Secretary of State for Social Services in this new administration. Sir Keith is aged 52 and was educated at Harrow and Magdalen College, Oxford, where he obtained first-class honours in Law. He is a Fellow of All Souls, Entering Parliament in 1956 as member for Leeds North-East, Sir Keith was soon appointed Parliamentary Private Secretary to the Under Secretary of State for Commonwealth Relations. In 1959 he became Parliamentary Secretary to the Ministry of Housing, subsequently serving as junior Minister at the Board of Trade. In 1962 he was made Minister for Welsh Affairs. In opposition he was Conservative spokesman on technology and trade. Sir Keith succeeded his father as baronet in 1944 and has had wide experience in business.

Medical Research Council Appointments

The Secretary of State for Education and Science, in consultation with the Medical Research Council and the President of the Royal Society, has made the following appointments to the Medical Research Council from 1 October: Professor Richard Doll, F.R.S. (Regius Professor of Medicine at the University of Oxford) and Professor R. R. Porte, Ph.D., F.R.S. (Whitley Professor of Biochemistry at the University of Oxford). They are being appointed in succession to Professor D. A. K. Black and Professor W. T. I. Morgan, F.R.S., who are retiring from membership of the M.R.C. after the normal period of service.

Postgraduate Qualifications

The Medical Act enables the General Medical Council to register as additional qualifications a much wider range of postgraduate qualifications than previously. The President of the G.M.C., Lord Cohen, announced to the Council at its recent session that as a first step the following qualification would in future be recognized: Membership and Fellowship of the Royal College of Obstetricians and Gynaecologists, the Royal College of Pathologists, and the Royal College of General Practitioners; the Fellowship in the Faculty of Anaesthetists of the Royal College of Surgeons of England, and the Fellowship of the Faculty of Radiologists. The President anticipated that other qualifications would be added before long.

Cancer Research

A co-ordinating Committee on Cancer Research has been established jointly by the Medical Research Council, the Cancer
News and Notes

6th Congress of the World Federation of Haemophilia—25-27 July, Vienna. Details from the Congress Secretariat, c/o Vienna Academy of Medicine, Stadthausgasse 6-8, A-1010 Vienna, Austria.

Societies and Lectures
For attending lectures marked * a fee is charged. Applications should be made first to the institution concerned.

Sunday, 28 June
TYNE TV: TELEVISION—10.15 a.m. Postgraduate Medicine: Hypoxia in Medicine and Dentistry (repeat). (Prepared in collaboration with the Regional Postgraduate Institute for Medicine and Dentistry, Newcastle upon Tyne.)

Monday, 29 June
INSTITUTE OF PHYSIOLOGY AND OTOLOGY—5.30 p.m. Combined staff consultation clinical meeting.
KINGSTON-UPON-THAMES MEDICAL CENTRE—12.30 p.m. Mr. P. L. C. Diggy: Epidemiology of Malaria.
ROYAL NORTHERN HOSPITAL POSTGRADUATE CENTRE, Liverpool—11 a.m., postgraduate medicine (repeat) (prepared by Glasgow Postgraduate Medical Board).

Tuesday, 30 June
B.C. I: TELEVISION—11.20 a.m. Medicine Today: Febrile Children. (Repeat) (Prepared in collaboration with A.S.M.E.)

Wednesday, 1 July
INSTITUTE OF NEUROLOGY—5.30 p.m. lecture and discussion by Mr. R. D. Dix: Neuro-otological Diagnosis in cochlear deafness.
ROYAL POSTGRADUATE MEDICAL SCHOOL—10.15 a.m. Medical staff round; 2 p.m. Dr. G. Asherson: Mechanism of Delayed Hypersensitivity.
SCOTTISH TELEVISION—11.20 a.m. postgraduate medicine (repeat) (prepared by Glasgow Postgraduate Medical Board).
TYNE TV: TELEVISION—10.15 a.m. Postgraduate medicine (repeat) (prepared by the Regional Postgraduate Institute for Medicine and Dentistry, Newcastle upon Tyne.)

Thursday, 2 July
ST. MARY'S HOSPITAL MEDICAL SCHOOL—5 p.m. Mr. R. B. Lewis: Studies in Fetal Development.

Friday, 3 July
NEWCASTLE UPON TYNE REGIONAL NEUROLOGICAL CENTRE—At Newcastle General Hospital, 5.30 p.m. Mr. J. Brice: Cerebral Vasospasm.
ROYAL POSTGRADUATE MEDICAL SCHOOL—10 a.m. surgery round; 11 a.m. surgical Research Society meeting.

Sunday, 5 July
TYNE TV: TELEVISION—12.55 p.m. Postgraduate medicine: Epilepsy (repeat). (Prepared in collaboration with the Regional Postgraduate Institute for Medicine and Dentistry, Newcastle upon Tyne.)

Universities and Colleges
ROYAL COLLEGE OF SURGEONS OF ENGLAND
At a meeting of the council held on 11 June, with Sir Thomas Holmes Sellers, president, in the chair, the following were co-opted to the council for the year 1970-1, representing various branches of clinical conferences: Mr. J. E. Elton, gastroenterology; Mr. J. H. S. Tomkinson; ophthalmology; Mr. J. R. Hudson; otolaryngology; Mr. D. Ranger; radiology; Dr. J. W. D. Bull. Group Captain J. E. Malcolm was appointed first Cadet professor of surgery in the Royal Air Force for three years from July 1970. Begley prizes were awarded to Kay Thompson (St. Mary's Hospital Medical School) and to Claire M. O'Garriffe (King's College Hospital Medical School). A diploma of fellowship was granted to I. H. Johnston. Diplomas of membership were granted to J. M. E. Anderson, D. A. Floate, and C. de B. White.

After the meeting a Hunterian lecture was delivered by Professor J. W. Jackson on "The Surgical Approach to the Anterior Spinal Column."

ROYAL COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS
At an admission ceremony held on 12 June Sir W. H. Porritt, Bt., & Mr. W. G. Barter, were admitted to the Honorary Fellowship.
The following were admitted to the Fellowship admission date July 12:
C. Astley Clarke, F. E. Hysten, Margaret Jackson, Axel Engelmann-Sundberg.
The following were elected to the Membership and admitted immediately to the Fellowship:
E. De Valera, A. Kamel Na'in, L. L. Williams.
The following were admitted to the Fellowship admission date July 12:
F. Akushsh, S. L. Barrow, Catherine Blyth, Florence J. G. Chouler, P. Curzen, A. M. Dawson, A. E. Earn, A. D. El-Tanin, Margaret E. M. Färber, J. W. S. Harris, D. F. Hawkins, A. G. Jones, Joseph, W. Lee, J. L. Levy, John-Peyton-Jenni, R. R. Macdonald, M. C. Michelow, B. J. Murphy, A. K. Mitra, Darem, P. Boudj., R. G. Pickles, D. Dufet, J. G. Robertson, J. St. George, T. S. R. Train, F. L. A. Vonnro, J. N. Ward, D. W. Warrill.

Correction
Diaspam and Neuromuscular Transmission
In the letter by Drs. G. Montagnoli and Barbara J. Plevvy (20 June, p. 734) we regret that two lines of text were inadvertently transposed and appeared on the summary column instead of running on as part of the second paragraph. The second paragraph should have read: "In order to determine whether diaspam affects transmission at the neuromuscular junction we have investigated its activity upon the rat phrenic nerve-diaphragm preparation in vitro."

Notice to Authors
When original articles and letters for publication are not submitted exclusively to the British Medical Journal this must be stated.
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Doctors who are not members of the B.M.A. can subscribe to the B.M.J. The rates for doctors resident in the United Kingdom and abroad are given on the first page of the classified advertisements. These include the rate for the North American "Air Express," which is available to both members and non-members of the B.M.A.

Classified Advertisements
Doctors Abroad—Copies of the appointment vacancies advertised in the B.M.J. can be sent by airmail on request. Members' rate: the airmail cost is 40s. for six weeks, for which copies of vacancies in up to five sections of the classified advertisements will be sent. Non-members' rate to the 'next week's' supply of five headings or less. Additional headings (for members and non-members) to those already advertised are charged at 10s. per specific grade in any section cannot be accepted. Payment must be prepaid and enclosed with the application.

Rates of words, letters, etc., for classified advertisements appear on the first page of the classified section.

People in the News
Professor P. C. C. Garnham, F.R.S., emeritus professor, London School of Hygiene and Tropical Medicine, has been nominated by the Pope as an Academician of the Pontifical Academy of Sciences.

Surgeon-captain F. P. Ellis, R.N. Retired, has been appointed visiting Fellow to Professor John B. Perrett, Foundation Laboratory, New Haven, Connecticut, from 1 June, and visiting professor of epidemiology in the department of epidemiology and preventive medicine, Yale Medical School, from 1 July.

Mr. R. Myles Gibson has been appointed honorary consultant in neurosurgery to the Army at Home.

Coming Events
King Edward's Hospital Fund for London.—A series of conferences on "Geriatric Care" will be held between June and December. Details are obtainable from Miss J. G. Bricknell, Hospital Centre, 24 Nutfield Place, London W1H 6AN.

"Contribution of Medicine to International Co-operation."—Joint conference by the Medical Association for Prevention of War and the United Nations Association, 3-5 July, Canterbury. Registration fee £1. Details from the conference secretary, Mrs. K. MacSorley, 238 Camden Road, London N.W.1.

"Infection Control."—Conference to be held at the University of Birmingham, September 6-8. More details are available from Dr. S. E. F. F. MacGregor, University of Birmingham, Medical School, Edgbaston, Birmingham, B15 2TT.

"The Treatment and Prevention of Cancer in Africa."—Conference to be held at the Royal Tropical Institute, Amsterdam, 7-9 November. Registration fees are £50 for members of British Medical Association, £70 for non-members. Details from Miss Brianne Marshall, Royal Tropical Institute, P.O. Box 2318, Amsterdam, The Netherlands.