NEW FRONTIERS IN HEALTH CARE ETHICS

A DISCUSSION ON THE TOPIC ‘NEW FRONTIERS IN HEALTH CARE ETHICS’ FROM A PUBLIC DEFENDER’S PERSPECTIVE WILL ALWAYS BE CONSIDERED IN A HUMAN RIGHTS CONTEXT.

THE ‘NEW FRONTIER IN HEALTH CARE ETHICS’ SHOULD BE MORE HUMAN RIGHTS CENTERED WITH CONSTITUTIONAL RIGHTS OF PATIENTS BEING ONE OF THE HEAD CORNERSTONES MOULDING AND SHAPING ETHICAL DECISIONS AND STANDARDS IN THE PROVISION OF HEALTH CARE.

HOWEVER, USING ONLY HUMAN RIGHTS LAW TO CONSIDER THIS TOPIC IS ANALOGOUS TO PRESCRIBING ONE MEDICINE FOR ALL AILMENTS.

HUMAN RIGHTS HOWEVER HAS ITS PLACE IN ANY DISCUSSION ON ETHICS AS RIGHTS ARE A PART OF ETHICS BUT HUMAN RIGHTS ARE NOT ALL THERE IS TO ETHICS.
THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS ENACTED BY PARLIAMENT AND WHICH RECEIVED THE ROYAL ASSENT ON APRIL 8, 2011 REPRESENTS AN IMPORTANT DEVELOPMENT IN THE PROTECTION OF HUMAN RIGHTS IN JAMAICA.

THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS GUARANTEE, INTER ALIA, THE FOLLOWING CONSTITUTIONAL RIGHTS:

- THE RIGHT TO LIFE
- SECURITY OF PERSON
- THE PROTECTION OF LAW
- PROTECTION FROM ARBITRARY ARREST OR DETENTION
- PROTECTION FROM DISCRIMINATION
- PROTECTION FROM INHUMAN TREATMENT
- RESPECT FOR PRIVATE AND FAMILY LIFE
- FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION
- FREEDOM OF EXPRESSION

- PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION

SO WHY IS THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS IMPORTANT TO MEDICAL PROFESSIONAL ETHICS?

MANY OF YOU WILL OPINE THAT THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS HAVE VERY LITTLE TO DO WITH THE MEDICAL PRACTITIONER AND EVEN LESS TO DO WITH ACCESSING HEALTH CARE OR EVEN MEDICAL INFORMATION BECAUSE THE CHARTER'S MAIN CONCERN IS WITH CIVIL AND POLITICAL RIGHTS FOR THE PROTECTION OF PERSONS AGAINST STATE ACTIONS.

THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS IS IMPORTANT TO THE MEDICAL PROFESSION BECAUSE IT IS ONE OF THE LEGAL DOCUMENTS IN FACT, THE MOST IMPORTANT LEGAL DOCUMENT WHICH REGULATES THE RELATIONSHIP BETWEEN THE MEDICAL COMMUNITY AND ITS PATIENTS AND HOSPITALS AND PATIENTS. ALMOST ALL DECISIONS TOUCHING A PATIENT'S HEALTH HAVE THE POTENTIAL OF IMPACTING SOMEONE'S HUMAN RIGHTS. IT IS IMPERATIVE THAT THE REASONING FOR
REACHING ANY DECISION PARTICULARLY THE ADVERSE ONES ARE PROPERLY DOCUMENTED AND CHARTER COMPATIBLE.

PUBLIC AUTHORITIES SUCH AS PUBLIC HOSPITALS ARE UNDER A DUTY TO ACT WITHIN THE CHARTER STANDARDS. DOCTORS EMPLOYED TO PUBLIC HOSPITALS ARE ALSO UNDER THAT DUTY TO ACT IN A WAY THAT IS COMPATIBLE TO CHARTER RIGHTS.

DOCTORS WORKING WITHIN THE PUBLIC SECTOR ARE AGENTS OF THE PUBLIC AUTHORITIES. THERE IS A NOVEL PROVISION OF THE CHARTER WHICH SUGGESTS THAT DOCTORS IN PRIVATE PRACTICE ARE ALSO UNDER A DUTY TO ACT WITHIN CHARTER STANDARDS.

THERE IS ON GOING DISCUSSION AS TO WHETHER A CLAIM CAN BE BROUGHT AGAINST THESE DOCTORS FOR ACTING IN A MANNER THAT IS REGARDED AS INCOMPATIBLE WITH CHARTER PROVISIONS.

I SUSPECT THAT MOST DOCTORS ARE NOT RIGHTS FOCUSED AND IT IS HOPED THAT THIS PRESENTATION
WILL SHOW THAT GOOD ETHICAL PRACTICES FOCUSED ON:

- THE BEST INTEREST OF THE PATIENT
- DO NO HARM
- THE PATIENT HAS THE RIGHT TO CHOOSE OR REFUSE TREATMENT
- EQUITABLE DISTRIBUTION OF SCARCE HEALTH RESOURCES
- TREATMENT WITH DIGNITY OF BOTH PATIENT AND HEALTH CARE PROFESSIONAL
- TRUTHFULNESS
- HONESTY
- ACCESS TO HEALTH CARE MUST BE UNIVERSAL, GUARANTEED FOR ALL ON AN EQUITABLE BASIS.
- HEALTH CARE INSTITUTIONS AND PROVIDERS MUST RESPECT DIGNITY, PROVIDE CULTURALLY APPROPRIATE CARE BE RESPONSIVE TO NEEDS BASED ON GENDER AGE CULTURE DIFFERENT WAYS OF LIFE AND ABILITIES
- PROTECTION OF CONFIDENTIALITY
- ALL HEALTH CARE MUST BE MEDICALLY APPROPRIATE AND OF GOOD QUALITY, GUIDED BY
QUALITY STANDARDS AND CONTROL MECHANISMS PROVIDED IN A TIMELY SAFE AND PATIENT CENTERED MANNER.

- HEALTH CARE MUST BE PROVIDED WITHOUT DISCRIMINATION (PATENT OR LATENT) BASED ON HEALTH STATUS, RACE AGE SEX, SEXUAL ORIENTATION, RELIGION SOCIAL STATUS CLASS OR OTHERWISE.

- EVERYONE MUST HAVE ACCESS TO EQUAL HEALTH CARE.

- RESOURCES AND SERVICES MUST BE DISTRIBUTED IN A BALANCED WAY.

- THE HEALTH CARE SYSTEM HAS TO BE ACCOUNTABLE TO THE COMMUNITY IT SERVES.

- ACCESS TO HEALTH CARE MUST BE UNIVERSAL, GUARANTEED FOR ALL ON AN EQUITABLE BASIS

- The health care system must be open with regard to information, decision-making, and management.

- The health care system must enable meaningful public participation in all decisions affecting people's right to health care.
Closely echo the standards set by the Charter of Fundamental Rights and Freedoms.

While the Charter did not specifically enumerate the right to a reasonable standard of health care as a Charter right the right to life is guaranteed positively and negatively. The positive duty is to take appropriate steps to safeguard life.

The negative is a duty to refrain from doing anything which would endanger or jeopardise life, for example, to ignore an ailing patient at a medical facility, to the extent that he died on the hospital floor without medical attention which reportedly happened at the Spanish town hospital not long ago.

The provision of a reasonable standard of health care is a prerequisite and indispensable to the right to life. Human rights are indivisible and interdependent.
THE RIGHT TO LIFE IS MEANINGLESS WITHOUT A GUARANTEED SYSTEM OF HEALTH PROTECTION FOR ALL, ACCESSIBLE TO ALL ON AN EQUITABLE BASIS. THIS HOWEVER HAS ITS PRACTICAL LIMITATIONS.

IN A SOUTH AFRICAN CASE OF SOOBRAMOONEY V. MINISTER OF HEALTH 4 BHRC 308, A MAN WAS TERMINALLY ILL WITH RENAL FAILURE WAS REFUSED ADMISSION TO HOSPITAL FOR ONGOING DIALYSIS TREATMENT BECAUSE OF A SHORTAGE OF RESOURCES WHICH COMPELLED THE HOSPITAL TO IMPLEMENT GUIDELINES PRECLUDING HIS ADMISSION. THE MAN POINTED TO THE RIGHT IN THE SOUTH AFRICAN CONSTITUTION NOT TO BE REFUSED EMERGENCY TREATMENT AND SAID THAT THIS, CONSTRUED TOGETHER WITH THE RIGHT TO LIFE, OBLIGATED THE STATE TO PROVIDE THE RESOURCES NECESSARY FOR ONGOING TREATMENT OF HIS CHRONIC ILLNESS FOR THE PURPOSE OF PROLONGING HIS LIFE.

THE CONSTITUTIONAL COURT HELD THAT THE HOSPITAL WAS NOT IN BREACH OF THE REQUIREMENT THAT 'NO ONE MAY BE REFUSED EMERGENCY MEDICAL TREATMENT,' BECAUSE THE ABSOLUTE NATURE OF THAT
REQUIREMENT HAD TO BE VIEWED IN LIGHT OF THE FURTHER PROVISION OF THE CONSTITUTION THAT ‘EVERYONE HAS THE RIGHT TO HAVE ACCESS TO HEALTH SERVICES.’

WHEN TAKEN TOGETHER, IN THE CONTEXT OF FINITE RESOURCES, THE COURT FOUND THAT AN UNQUALIFIED OBLIGATION TO MEET HEALTH CARE NEEDS, WAS IMPOSSIBLE TO FULFIL. THE FULFILLMENT OF ONE OF THE CONSTITUTIONAL REQUIREMENTS WOULD INEVITABLY LEAD TO A FAILURE TO MEET THE OTHER. A BALANCE HAD TO BE STRUCK AND IF THAT BALANCE WAS ARRIVED AT IN GOOD FAITH AND ON THE BASIS OF RATIONAL DECISIONS BY THE HEALTH AUTHORITY, THE COURT SHOULD BE SLOW TO INTERFERE.

PUT ANOTHER WAY THE SOUTH AFRICAN CONSTITUTIONAL COURT LIMITED THE SCOPE OF WHAT APPEARED TO BE AN ABSOLUTE REQUIREMENT BY STIPULATING THAT IT WAS ENOUGH FOR THE STATE TO ACT REASONABLY IN THE ALLOCATION OF RESOURCES.

THE HUMAN RIGHT TO HEALTH IS PROTECTED IN:
• Article 25 of the Universal Declaration of Human Rights
• Article 12 of the International Covenant on Economic, Social and Cultural Rights
• Article 24 of the Convention on the Rights of the Child
• Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination
• Articles 12 & 14 of the Convention on the Elimination of All Forms of Discrimination Against Women
• Article XI (11) of the American Declaration on Rights and Duties of Man
• Article 25 of the Convention on the Rights of Persons with Disabilities

JAMAICA IS A SIGNATORY TO THESE INTERNATIONAL TREATIES AND HAS OBLIGATIONS THEREUNDER.

BY VIRTUE OF THESE OBLIGATIONS WE ARE MANDATED TO OBSERVE THE HIGHEST STANDARDS OF PROFESSIONALISM TO THOSE WHO WE CARE FOR.

YOUR PROFESSION, LIKE THE LEGAL PROFESSION, IS LARGELY FOUNDED IN TRUST, WHICH PLACES ON YOU, AS IT DOES ON LAWYERS, THE HIGH BURDEN OF ETHICAL PROPRIETY.

THE DESIGN OF A HEALTH CARE SYSTEM MUST BE GUIDED BY THE KEY HUMAN RIGHTS STANDARDS UNDERLINED BY ETHICS.
ETHICS

ETHICS IS ABOUT WHAT WE OUGHT OR OUGHT NOT TO DO. BIOETHICS IS ONE BRANCH OF ETHICS. IT IS WIDE IN SCOPE AND SUBSUMES THE CONCEPT OF MEDICAL ETHICS.

"ETHICS" TODAY REMAINS A SUBJECT OF VERY SCHOLARLY DEBATE. FOR SOME, IT INCLUDES ENVIRONMENTAL ISSUES, LEGAL ISSUES, AND ISSUES OF MORALITY; BUT DISCUSSION IN BIOETHICS STILL TEND TO FOCUS PRIMARILY ON ISSUES IN MEDICINE, THE LIFE SCIENCES, AND NEW TECHNOLOGIES, INCLUDING THOSE ARISING OUT OF THE HUMAN GENOME PROJECT. THE TERM "BIOETHICS" REMAINS WIDER IN SCOPE THAN, BUT STILL INCLUDES MEDICAL ETHICS.

ACCORDING TO THE ENCYCLOPEDIA OF BIOETHICS (1995 ED. P. 250) "BIOETHICS" ENCOMPASSES:-

"THE BROAD TERRAIN OF THE MORAL PROBLEMS OF THE LIFE SCIENCES, ORDINARILY TAKEN TO ENCOMPASS MEDICINE, BIOLOGY, AND SOME IMPORTANT ASPECTS OF THE ENVIRONMENTAL,
POPULATION AND SOCIAL SCIENCES. THE TRADITIONAL DOMAIN OF MEDICAL ETHICS WOULD BE INCLUDED IN THIS ARRAY, ACCOMPANIED NOW BY MANY OTHER TOPICS AND PROBLEMS”

IT IS SOMETIMES SAID THAT SCIENCE MOVES SO QUICKLY THAT ETHICS HAVE A DIFFICULTY KEEPING UP. JUST BECAUSE SOMETHING IS TECHNICALLY POSSIBLE, DOES NOT MEAN THAT IT SHOULD BE DONE. FOR INSTANCE: BECAUSE THE DAY-OLD CHICK CAN CATAPULT TO A FULL DINNER-SIZE CHICKEN IN 2 WEEK, DOES THAT MEAN THAT IT SHOULD BE DONE?

THE STUDY OF ETHICS INCLUDES TOPICS SUCH AS:

(a) GENETIC TESTING AND SCREENING
(b) REPRODUCTIVE AND THERAPEUTIC CLONING
(c) USE OF STEM CELLS
(d) EMBRYO RESEARCH
(e) ABORTION
(f) ASSISTED REPRODUCTION
(g) PARENTAL SCREENING
IN JAMAICA TODAY, THE MOST IDENTIFIABLE TOPICS, TO OUR PARTICULAR SITUATION, ARE ARGUABLY: ABORTION, PATIENT CONFIDENTIALITY, WHISTLEBLOWING LEGISLATION, TREATMENT OF SUSPECTED DRUG TRAFFICKERS. ASSISTED REPRODUCTION SHOULD BE CLOSE BEHIND. OF COURSE THIS IS FROM A LAWYER’S PERSPECTIVE. AS DOCTORS YOU MAY SEE IT DIFFERENTLY.
HOT TOPICS

ABORTION

ABORTION IS STILL UNLAWFUL IN JAMAICA ACCORDING TO THE PROVISIONS OF THE OFFENCES AGAINST THE PERSON ACT 1864. SECTIONS 72 AND 73 STATE:

ATTEMPTS TO PROCURE ABORTION

"72. EVERY WOMAN, BEING WITH CHILD, WHO WITH INTENT TO PROCURE HER OWN MISCARRIAGE, SHALL UNLAWFULLY ADMINISTER TO HERSELF ANY POISON OR OTHER NOXIOUS THING, OR SHALL UNLAWFULLY USE ANY INSTRUMENT OR OTHER MEANS WHATSOEVER WITH THE LIKE INTENT; AND WHOSOEVER, WITH INTENT TO PROCURE THE MISCARRIAGE OF ANY WOMAN, WHETHER SHE BE OR BE NOT WITH CHILD, SHALL UNLAWFULLY ADMINISTER TO HER, OR CAUSE TO BE TAKEN BY HER, ANY POISON OR OTHER NOXIOUS THING, OR SHALL UNLAWFULLY USE ANY INSTRUMENT OR OTHER MEANS WHATSOEVER WITH THE LIKE INTENT, SHALL BE GUILTY OF FELONY, AND, BEING CONVICTED THEREOF, SHALL BE LIABLE TO BE
IMPRISONED FOR LIFE, WITH OR WITHOUT HARD LABOUR."

"73. WHOSOEVER SHALL UNLAWFULLY SUPPLY OR PROCURE ANY POISON OR OTHER NOXIOUS THING, OR ANY INSTRUMENT OR THING WHATSOEVER, KNOWING THAT THE SAME IS INTENDED TO BE UNLAWFULLY USED OR EMPLOYED WITH INTENT TO PROCURE THE MISCARRIAGE OF ANY WOMAN, WHETHER SHE BE OR BE NOT WITH CHILD, SHALL BE GUILTY OF A MISDEMEANOUR, AND, BEING CONVICTED THEREOF, SHALL BE LIABLE TO BE IMPRISONED FOR A TERM NOT EXCEEDING THREE YEARS, WITH OR WITHOUT HARD LABOUR."

THE LAW MAKES IT A CRIMINAL OFFENCE FOR THE WOMAN TO PROCURE THE ABORTION HERSELF. AND IF THE ABORTION IS DONE UPON THE WOMAN BY ANOTHER PERSON, THAT OTHER PERSON COMMITS THE OFFENCE. WHEN THE ABORTION IS CARRIED OUT BY THE WOMAN HERSELF, THEN SHE IS LIABLE TO BE CONVICTED IN A COURT OF LAW IF THE PROSECUTION IS ABLE TO PROVE THE FOLLOWING:
(a) THAT THE WOMAN WAS PREGNANT

(b) SHE ADMINISTERED THE NOXIOUS THING OR SUBSTANCE TO HERSELF; OR IF IT WAS DONE BY AN INSTRUMENT, THAT SHE APPLIED OR USED THE INSTRUMENT HERSELF;

(c) THAT THE FOETUS, WAS EXPELLED AS A DIRECT RESULT OF THAT ACT;

(d) AND THAT SHE HAD THE INTENTION OF BRINGING ABOUT SUCH A MISCARRIAGE.

WHEN THE ABORTION WAS CARRIED OUT ON THE WOMAN BY ANOTHER PERSON, THE VERY SAME INGREDIENTS ARE REQUIRED TO BE PROVED, SAVE AND EXCEPT THAT THE CONDUCT AT PARAGRAPH (b) WAS DONE BY THAT OTHER PERSON, AND THE INTENTION DESCRIBED AT PARAGRAPH (d) WAS THE INTENTION OF THAT OTHER PERSON.

WHERE THE ABORTION WAS DONE BY ANOTHER PERSON WITH THE WOMAN'S CONSENT, THEN IN ADDITION TO BOTH THE WOMAN AND THE OTHER PERSON BEING CHARGED WITH THE OFFENCE, BOTH OF THEM WOULD
CERTAINLY BE CHARGED WITH THE ADDITIONAL OFFENCE OF CRIMINAL CONSPIRACY.

THAT "OTHER PERSON" CAN BE A MEDICAL DOCTOR.

Abortion law 1803-1967

1803 - 'Lord Ellenborough's Act' made abortion a statutory felony both before and after 'quickening', punishable by death.

1837 (re-enacted 1861) - The Offences Against the Person (OAP) Act, made it illegal to 'procure a miscarriage' or provide the means for a woman to 'procure a miscarriage', punishable by life imprisonment.

1929 - The Infant Life Preservation (ILP) Act was added to fill a gap in English law in that no statute covered the destruction of a child in the process of being born. It created the 'fetal viability clause': anyone who destroyed a child 'capable of being born alive' was guilty of a crime, unless it was done 'in good faith for the purpose of preserving the life of the mother'. The ILP Act set fetal viability at a gestational age of 28 weeks.

1939 - R v Bourne introduced the concept that pregnancy could have detrimental effects on a woman's mental health such as to pose a significant risk to her 'life'.

1967 - The Abortion Act provided a defence to the OAP Act, making abortion legal when the conditions of the Act are complied with. The ILP Act still stands, setting the legal upper limit for termination at 28 weeks.
1991 - The Human Fertilisation and Embryology Act amended the 1967 Act to lower the upper limit to 24 weeks. The amendments also overrule the fetal viability clause and permit abortion for fetal handicap up until birth. The ILP Act is now irrelevant in English law.

**PATIENT CONFIDENTIALITY**

WITH RESPECT TO PATIENT CONFIDENTIALITY PERHAPS THE MEDICAL ETHICAL ISSUE EXERCISING THE MINDS OF MANY PEOPLE IN JAMAICA TODAY IS HIV SCREENING. IT IS NOT UNCOMMON FOR SOME EMPLOYERS TO REQUIRE HIV SCREENING AS A PRECONDITION TO EMPLOYMENT; WHERE A POSITIVE RESULT WOULD DISQUALIFY THE INDIVIDUAL FROM EMPLOYMENT.

IN SUCH A SITUATION THE DOCTOR IS CAUGHT BETWEEN THE REQUIREMENT FOR MAINTAINING THE DOCTOR-PATIENT CONFIDENTIALITY ON ONE HAND, AND ON THE OTHER HAND, THE REQUIREMENT FOR REPORTING SUCH SENSITIVE INFORMATION TO THE PROSPECTIVE EMPLOYER.

IN ADDITION TO ALL OF THIS, IS THE EVER-PRESENT RISK OF THE INFORMATION CONCERNING THE POSITIVE
RESULT GETTING TO THIRD PARTIES; AFTER ALL IT IS NOT ONLY THE DOCTOR DOING THE SCREENING WHO WOULD HAVE ACCESS TO THE PATENT'S INFORMATION.

IN THESE CIRCUMSTANCES, NOT ONLY IS THE REQUIRED SCREENING A BREACH OF PRIVACY, BUT THE LEAKING OF THE POSITIVE RESULT CONSTITUTES AN INFRINGEMENT OF THE INDIVIDUAL'S RIGHT TO BE PROTECTED FROM DISCRIMINATION.

IN THE ABSENCE OF ANY REGULATORY FRAME WORK IN JAMAICA TODAY, IT MAY WELL END UP BEING A SITUATION WHEREBY THE INDIVIDUAL'S FUNDAMENTAL RIGHTS ARE TRUMPED BY AN ORGANIZATION'S EXPEDIENCE.

**WHISTLEBLOWING LEGISLATION**

IN 2011, JAMAICA ENACTED THE PROTECTED DISCLOSURES ACT, POPULARLY KNOWN AS THE WHISTLEBLOWER LAW. IT CAME INTO OPERATION ON THE 7\(^{TH}\) AUGUST 2012. THE AIM OF THE LEGISLATION IS TO ENCOURAGE AND FACILITATE SPECIFIED DISCLOSURES OF IMPROPER CONDUCT IN THE PUBLIC INTEREST, WHILE
PROTECTING PERSONS REPORTING SUCH. IT IS APPLICABLE TO ALL EMPLOYERS AND EMPLOYEES. IN OUR CULTURE THE ATTITUDE TOWARDS PERSONS PERCEIVED AS GIVING INFORMATION OR EVIDENCE OF WRONGDOING ON THE PART OF OTHERS IS GENERALLY UNFAVOURABLE AT BEST OR HOSTILE AT THE WORST.

THE INFORMER-FI-DEAD CULTURE HAS REGRETTABLY BECOME ENTRENCHED SO MUCH SO THAT IT IS MANIFESTED IN THE LYRICAL CONTENT OF LOCAL POPULAR SONGS. SUCH PERSONS INVARIABLY ATTRACT HARSH AND CONDEMNATORY TREATMENT FROM EVEN COLLEAGUES.

A READING OF THE ACT SUGGESTS THAT DISCLOSURES WHICH IF MADE IN GOOD FAITH ARE PROTECTED AND INCLUDES:

(a) THE COMMISSION OF A CRIMINAL OFFENCE, OR THE LIKELIHOOD OF THE COMMISSION OF A CRIMINAL OFFENCE
(b) A PERSON'S FAILURE TO COMPLY WITH A LEGAL OBLIGATION
(c) THE MISCARRIAGE OF JUSTICE HAS OCCURRED, IS OCCURRING, OR IS LIKELY TO OCCUR
(d) THE HEALTH OR SAFETY OF ANY INDIVIDUAL E.G. HOSPITAL STAFF IS AWARE OF AN OBVIOUS OUTBREAK OF A DISEASE IN THE HOSPITAL AND THE INFORMATION IS CONSCIOUSLY AND DELIBERATELY SUPPRESSED.

JAMAICA BEING A SIGNATORY TO THE UN CONVENTION AGAINST CORRUPTION AS WELL AS A SIGNATORY TO THE OAS INTER AMERICAN CONVENTION AGAINST CORRUPTION, JAMAICA IS OBLIGED TO SEEK THE STRICTEST CONFORMITY WITH THE TERMS OF THE LEGISLATION.

DRUG SUSPECTS

THERE IS THE COMMON PRACTICE WHEREBY POLICE OFFICERS BRING IN PERSONS MAINLY FROM THE AIRPORT, TAKEN OFF INTERNATIONAL FLIGHTS, CLAIMING THAT SUCH PERSONS HAVE INGESTED DRUGS. THE MEDICAL STAFF INVARIABLY OBLIGES THE POLICE AND
PROCEEDS TO CARRY OUT X-RAYS AND OTHER PROCEDURES ON THESE PERSONS.

ALL OF THIS WITHOUT THE CONSENT OF THE PERSON. THE DOCTORS IN PARTICULAR INVARIABLY GO FURTHER WHEN THEY THINK THE X-RAY HAS SHOWN "SOMETHING", OR WHEN NOTHING IS DISCLOSED, BUT THE POLICE OFFICERS INSIST THAT DRUGS ARE PRESENT INSIDE THE PERSON. THE DOCTORS THEN ADMINISTER LAXATIVES AND A WATCH IS KEPT UPON THE PERSON, FOR EVERY BOWEL MOVEMENT.

AS MEDICAL DOCTORS, BE WARNED THAT THIS IS A DANGEROUS PRACTICE! THE MORE INTRUSIVE THE TREATMENT, THE GREATER THE RISK OF LIABILITY TO WHICH THE DOCTOR AND HOSPITAL ARE EXPOSED.


MS. GREENWOOD WAS LAWFULLY TRAVELLING TO LONDON WITH A FRIEND WHO WAS TO HAVE A MEDICAL
PROCEDURE. BOTH WERE AT THE NORMAN MANLEY INTERNATIONAL AIRPORT. MS. GREENWOOD WAS PULLED OUT OF A LINE AND CARTED OFF TO THE NORMAN MANLEY POLICE STATION WHERE SHE WAS SUBJECT TO INVASIVE SEARCH BY A FEMALE POLICE WOMAN AND THEN TAKEN TO THE KINGSTON PUBLIC HOSPITAL WHERE SHE WAS X-RAYED. EVEN THOUGH THE DOCTOR WHO READ THE X-RAY SAW THAT THERE WAS NO EVIDENCE OF DRUGS THE CORPORAL INSISTED THAT THE DOCTOR CONDUCTS FURTHER EXAMINATIONS ON THIS LADY.

THE DOCTOR CARRIED OUT SEARCHES IN BODY CAVITIES WHICH YIELDED NO DRUGS. THE CORPORAL STILL NOT SATISFIED, INSISTED AND THE DOCTOR THEREUPON ADMINISTERED LAXATIVES. BLOOD WAS ALSO TAKEN FROM HER ON THREE OCCASIONS WITHOUT EXPLANATION.

MS. GREENWOOD WAS FINALLY RELEASED, AND THEREAFTER SUCCESSFULLY SUED THE STATE.
MS. GREENWOOD'S FUNDAMENTAL RIGHTS WERE BREACHED, AND SHE WAS AWARDED A HEFTY SUM IN COURT. ACTING ON THE MERELY "SAY SO" OF THE POLICE IS NOT A DEFENCE TO A CLAIM FOR CONSTITUTIONAL REDRESS, OR A CLAIM IN TORT; NEITHER CAN IT REDUCE THE EXTENT OF YOUR LIABILITY IN A COURT OF LAW.

THERE ARE SOME OTHER MATTERS PERTAINING TO YOUR PROFESSION THAT ARE COVERED BY LEGISLATION.

SOME LAWS

IN ADDITION TO THE ETHICS, THERE ARE SOME LAWS THAT STRICTLY FORBID CERTAIN ACTIVITIES IN YOUR PROFESSION, EVEN THOUGH SUCH ACTIVITIES MIGHT BE A PART OF YOUR REGULAR ROUTINE. FOR EXAMPLE:

THE ANATOMY ACT (ON THE LAW BOOKS SINCE SEPTEMBER 1949)

UNDER THIS LAW, NO PERSON SHALL RECEIVE OR HAVE IN HIS/HER POSSESSION A HUMAN BODY FOR ANY ANATOMICAL EXAMINATION, UNLESS HE/SHE IS THE HOLDER OF A LICENCE ISSUED BY THE APPROPRIATE MINISTRY. AND THIS IS APPLICABLE TO MEDICAL DOCTORS AS WELL.
SIMILARLY ALL HUMAN REMAINS RESULTING FROM THE ANATOMICAL EXAMINATION OF ANY BODY, MUST BE BURIED OR CREMATED IN ACCORDANCE WITH THE WRITTEN INSTRUCTION OF AN INSPECTOR OF A SCHOOL OF ANATOMY. (THE INSPECTORS ARE PERSONS SPECIALLY APPOINTED BY THE MINISTER.)

THE HUMAN TISSUE ACT (ON THE BOOKS SINCE AUGUST 1972)

EVEN THE DOCTOR IS BY THIS LAW PROHIBITED FROM USING ANY PART OF THE BODY OF A DECEASED PERSON, UNLESS AUTHORIZED TO DO SO. SUCH AUTHORITY CAN ONLY COME FROM PERSON, WHO MUST HAVE BEFORE HIS DEATH, EXPRESSED IN THE PRESENCE OF AT LEAST TWO WITNESSES, THAT HE REQUESTS HIS BODY OR ANY PART OF HIS BODY, TO BE USED AFTER HIS DEATH, FOR THERAPEUTIC PURPOSES OR FOR THE PURPOSES OF MEDICAL EDUCATION OR RESEARCH. SO IN OTHER WORDS, AN ENTERPRISING MEDICAL DOCTOR, OR AN EXUBERANT STUDENT DOCTOR SIMPLY CANNOT TAKE IT UPON HIM/HERSELF TO STORE BODY PARTS.
THE CREMATION ACT *(ON OUR LAW BOOKS SINCE DECEMBER 1951)*

This law prohibits even the medical doctor from ordering the cremation of any dead body, with lawful authority, or without the consent of the surviving relative of the deceased.

THE MEDICAL ACT *(ON OUR BOOKS SINCE NOVEMBER 1976)*

This statute which governs your profession, makes a registered medical practitioner guilty of a conduct that is disgraceful in a professional respect. This includes the situation where *inter alia* the doctor: willfully and without legal justification, betrays professional confidence. This undoubtedly includes doctor-patient confidentiality. Abandons a patient in danger without sufficient cause, and without giving him the opportunity to obtain the services of another practitioner.
NEED FOR REGULATORY FRAME WORK

AS HEALTH CARE BECOMES MORE GLOBAL IN REACH, THE LEGAL AND REGULATORY SCHEMES TO PROVIDE ADEQUATE GOVERNANCE HAVE NOT ALWAYS KEPT PACE. LESS SO AT THE LOCAL LEVEL. HERE IN JAMAICA, THERE IS CURRENTLY NO LAW ON OUR BOOKS RELATING TO MATTERS LIKE STEM-CELL RESEARCH, MEDICAL GANJA RESEARCH, ORGAN DONATION, TRANSPLANTATION PRACTICES; RE-PRODUCTIVE CLONING, AND OTHER MATTERS WHICH IMPORT ISSUES OF ETHICS.

DEVELOPED COUNTRIES HOWEVER (LIKE UK, USA AND EUROPE) HAVE WELL ESTABLISHED REGULATORY SYSTEMS FOR DEALING WITH THESE MATTERS.

DRUG SUSPECTS

THERE IS THE COMMON PRACTICE WHEREBY POLICE OFFICERS BRING IN PERSONS MAINLY FROM THE AIRPORT, TAKEN OFF INTERNATIONAL FLIGHTS, CLAIMING THAT SUCH PERSONS HAVE INGESTED DRUGS. THE MEDICAL STAFF INEVARIABLY OBLIGES THE POLICE AND
PROCEED TO CARRY OUT X-RAYS ON THESE PERSONS. ALL OF THIS WITHOUT THE CONSENT OF THE PERSON. THE DOCTORS IN PARTICULAR INVARIBLY GOES FURTHER WHEN THEY THINK THE X-RAY HAS SHOWN "SOMETHING", OR WHEN NOTHING IS DISCLOSED, BUT THE POLICE OFFICERS INSIST THAT DRUGS ARE PRESENT INSIDE THE PERSON. THE DOCTORS THEN "LAXITIES", AND A WATCH IS KEPT UPON THE PERSON, FOR EVERY BOWEL MOVEMENT.

AS MEDICAL DOCTORS, BE WARNED THAT THIS IS A DANGEROUS PRACTICE! THE MORE INTRUSIVE THE TREATMENT, THE GREATER THE RISK OF LIABILITY TO WHICH THE DOCTOR IS EXPOSED. IT IS A BREACH OF THE FUNDAMENTAL RIGHTS OF THE PERSON, AND HAS THE POTENTIAL OF ATTRACTING SUBSTANTIAL AWARD OF DAMAGES IN COURT. ACTING ON THE MERE "SAY SO" OF THE POLICE IS NOT A DEFENCE TO A CLAIM FOR CONSTITUTIONAL REDRESS; NEITHER CAN IT REDUCE THE EXTENT OF YOUR LIABILITY IN A COURT OF LAW.

ADDRESSING BIOETHICAL ISSUES

THERE IS NO ONE SET METHOD FOR ADDRESSING BIOETHICAL ISSUES. METHODS ARE AS DIVERSE AS THE MEDICAL AND SCIENTIFIC AREAS IN WHICH SUCH ISSUES CAN ARISE. FOR INSTANCE, ADDRESSING ISSUES RELATING TO ABORTION WOULD NECESSARILY BE DIFFERENT FROM THE METHOD FOR ADDRESSING THE ETHICAL ISSUES RELATING TO ASSISTED REPRODUCTION; EVEN THOUGH BOTH TOUCH AND CONCERN WOMEN'S RIGHTS.

SHOULD FOR EXAMPLE, PEOPLE SUFFERING FROM PSYCHIATRIC CONDITIONS SUCH AS SEVERE PROLONGED DEPRESSION THAT HAS NOT RESPONDED TO TREATMENT BE ELIGIBLE FOR PHYSICIAN ASSISTED DEATH (PAD)? MOST COUNTRIES THAT ALLOW PAD DO NOT PERMIT IT FOR PSYCHIATRIC CONDITIONS. BELGIUM AND THE NETHERLANDS ARE PERHAPS THE ONLY
COUNTRIES IN (WESTERN) EUROPE THAT ALLOW IT. SOME REGARD THE EXPANSION OF PAD TO PSYCHIATRIC CONDITIONS AS EVIDENCE OF AN INEVITABLY SLIPPERY SLOPE, AND THE REASON WHY PAD SHOULD NOT BE LEGALIZED AT ALL.

IN JAMAICA IT IS ILLEGAL, AND THE ASSISTING PHYSICIAN WOULD FIND HIMSELF FACING A CHARGE, POSSIBLY OF MURDER, MOST CERTAINLY, OF MANSLAUGHTER.

IT IS TO BE NOTED HOWEVER, THAT NOT ALL DOCTORS AGREE THAT ASSISTANCE IN DYING IS INCONSISTENT WITH THE DOCTOR’S ROLE. OTHERS REGARD IT AS WRONG, AND SEE IT AS DISHONOURING THE HIPPOCRATIC OATH. AND HEREAFTER LIES THE BIOETHICAL DILEMMA.

THERE IS AT PRESENT A NATIONAL BIOETHICS COMMITTEE OF JAMAICA WHICH WAS ESTABLISHED FROM AS FAR BACK AS 2006, AND FORMALLY LAUNCHED IN 2009. THIS COMMITTEE COMPRISSES INDIVIDUALS FROM THE VARIOUS BRANCHES OF THE HEALTH SECTOR, FROM THE RELIGIOUS COMMUNITY, ACADEMIA AND FROM A WIDE
CROSS-SECTION OF THE VARIOUS FIELD OF PROFESSIONAL ENDEAVOUR IN JAMAICA.

BIOETHICS EMERGED FROM AN ESTABLISHED HISTORY OF PROFESSIONAL MEDICAL ETHICS. ITS TOPICS TRADITIONALLY WERE BROADER THAN THOSE FACING CLINICIANS AND PATIENTS – OFTEN ASSOCIATED WITH DRAMATIC DEVELOPMENTS IN MEDICAL TECHNOLOGY AND HEALTH CARE; E.G.: REPRODUCTIVE MEDICINE, TRANSPLANTATION TECHNOLOGY, RESUSCITATION PRACTICES AND THE EMERGENCE OF INTENSIVE CARE UNITS IN HOSPITALS. IN THIS SENSE, BIOETHICS INCLUDED A WIDER AND MORE CHALLENGING SET OF ISSUES THAN TRADITIONAL MEDICAL ETHICS.