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CORRESPONDENCE

Correspondents are asked to be brief

Doctors and the Ombudsman

SIR,—It is sad the British Medical Association and some individual doctors have so strongly resisted the establishment of a Health Service Commissioner or Ombudsman. The distressing reports of malpractice in some hospitals published during the past few years which have resulted in the demand for an ombudsman have criticized many more nurses than doctors, yet the nursing organizations on the whole have supported the creation of such an office. Contrary to some views expressed, many general practitioners would also welcome an effective ombudsman.

Sir Keith Joseph is expected to announce shortly that an ombudsman will be appointed, but it is likely that complainants will not have direct access, in which event the ombudsman will be crippled from the start. The blame for this primary emasculation must in part lie with the doctors as well as self-protecting hospital authorities, civil servants, and the Government.

A properly organized office of Health Service Commissioner would have regional offices as well as a central one, and offer free access. This would benefit patients and staff, including doctors. With free access it is likely someone will complain at the beginning of things going wrong in a hospital so that the ombudsman, assisted by the Hospital Advisory Service, will be able to stop the rot before anything serious happens.

This will not be the case without free access. If complainants have to first go to the hospital authority or their member of Parliament, as in the case with the Parliamentary Commissioner, many will be inhibited because of fears of victimization or rejection.

There is ample evidence that complaints to hospital authorities are ignored and nurses victimized. Many people, particularly the young, have little confidence in their member of Parliament and it should be remembered that there is a gentleman's agreement between members of Parliament that they do not deal with each other's constituents,[1] so that a complainant who is dissatisfied with his own member cannot get help from another.

Your leading article (12 February, p. 393) expresses concern that the ombudsman should not deal with clinical matters. Firstly, it is difficult to define what is clinical and what is not, and secondly, complaints against doctors that sometimes lead to litigation are often due more to a clash of personalities between the patient or relative and the doctor or his representative than any serious negligence. In these circumstances free access to the ombudsman or his agent, where it would be possible to talk the matter out in an informal, welcoming atmosphere would resolve many complaints without public inquiry or action in the civil courts.

The commissioner and his staff would need to be of the highest calibre, but this is only a matter of careful selection and satisfactory remuneration.

Doctors, except the relatively few rotten apples, can only benefit from an effective Health Service Commissioner. We should be encouraging and advising not resisting.—I am, etc.,

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[1] House of Commons. *Second Report from the Select Committee on the Parliamentary Commissioner for Administration Together with the Proceedings of the Committee Relating to the Report and Minutes of Evidence.* London, H.M.S.O. 1971.

Confidentiality of Clinical Records

SIR,—The Medical Defence Union has already had a number of inquiries from practitioners concerning a new Rule of Court which could have a serious effect upon the privacy of the clinical records of individual patients.

This Rule (Order 24 Rule 7A) came into operation on 31 August 1971, and more and more solicitors acting for defendants in personal injury claims are taking advantage of it. It should be emphasized in the first place that the new Rule applies only to claims concerning personal injuries and not to any other kind of court proceedings. Within that category it is now open to a potential plaintiff even before litigation is commenced to apply for an order for discovery of documents, and for a defendant to apply for a similar order against a third party after proceedings have been commenced but before trial. Most of the recent cases with which the Union has been concerned have involved general practitioners and it may be helpful if I set out an illustration of the change in the law in that context.

Before 31 August 1971 a general practitioner who was approached by either side in a personal injuries action for medical information about a plaintiff could if he chose refuse to give that information; indeed if the request came from the defendant he was obliged to refuse the information unless the plaintiff agreed. If he refused to disclose the information the party requiring could obtain a subpoena *duces tecum* requiring the practitioner to attend at the trial and to produce his records. Since 31 August 1971 a defendant has been able to apply to the court for an order against a plaintiff's general practitioner requiring the practitioner to disclose the plaintiff's medical records before trial, but it should be noted that this application is not a mere formality. It is necessary for the applicant to satisfy the High Court Master or District Registrar that the practitioner has documents which are relevant to an issue arising or likely to arise in the action. The practitioner can be legally represented at the hearing of that application. The Master or the Registrar then has to decide whether to make an order and the Rules lay down the procedural steps which follow.