

## THE PHYSICIAN'S ROLE IN THE ADMINISTRATION OF JUSTICE\*

By Justice FELIX BAUTISTA ANGELO

As a member of our highest tribunal it is my sworn duty to help protect the life, liberty and property of the people pursuant to a constitutional mandate. Whenever any of your fundamental rights are grossly violated or trampled upon by any individual or public official, you go to the court of justice for redress. You repose on us your faith and trust that justice be dispensed with justly and promptly regardless of your stations in life, religious beliefs, or political affiliations. In short, believing that we are the guardians of justice you put your fate into our hands. That situation, gentlemen, is now reversed temporarily for during the rendition of this program it is my turn to place my life into your hands.

I wish to congratulate you for organizing this association which I reckon is aimed at promoting certain civic and cultural objectives. I believe in organization. Organization is the order of the day. You cannot nowadays accomplish anything of value without the collective efforts of those interested in a common objective. The era of isolationism is a thing of the past. This has given rise to the common saying, "In union there is strength." I wish, therefore, to commend you for organizing "The Catholic Physicians Guild" because only in that way you can fully accomplish the ideal aims and purposes of the profession to which you belong.

Your profession should not be looked upon merely as a means to make a living. It is not a mere trade established for profit or personal enrichment. It has its moral aspect that should not be overlooked but should weigh heavily on the conscience of the physician. Important as he is in the healthy growth of the human specie, a physician should extend his helping hand to the needy who may be found in distress. He should not begrudge his help to them simply because they are in penury or cannot give him reward for his services. There is greater satisfaction coming from service rendered in charity than from one with monetary consideration. Your profession is humanitarian and should be undertaken having always in mind the general welfare of society.

The functions of a physician are not merely confined to rendering medical aid to a person suffering from physical ailment. While this may be the main purpose of your profession, the role a physician is called upon to play in the community is of much wider scope. He is called upon not only to cure sick people and alleviate their sufferings but also to help in every way in promoting the moral and social welfare of the community. He cannot fold his arms and remain indifferent to the problems that beset the community especially those which affect the health and happiness of the people. He must be alert, assertive and militant in order to make of his community a decent and healthy place to live in. This is specially so in connection with the maintenance of peace and order and the solution of the problems affecting the administration of justice.

One of the greatest problems that our government is now

confronted refers to the maintenance of peace and order in our country and this can only be achieved if we maintain a successful administration of justice. This problem is vital and far-reaching not only because it affects the life, liberty and property of the individual but also because it transcends to the community and affects the general welfare of the people. In the administration of justice are involved not only judges, fiscals and other members of the bar but also the physicians — the members of your profession. Many of the cases that are brought to the courts have to be threshed out with the indispensable cooperation of the physician. In every case which involves physical injuries, rape, seduction, homicide or murder, the help of a physician is necessary and the role a physician plays is very important, because much of the success of the case depends upon the opinion of the physician. A physician, therefore, is an indispensable ally of the court. Without him the court cannot dispense justice with success and efficiency as demanded by our Constitution. In fact, much of the success of a case involving a medical problem depends upon the honesty, integrity and trustworthiness of the members of your profession.

The intervention of a physician is specially important in workmen's compensation cases which involve the claims of injured or deceased employees. Under the law a claim for compensation is compensable only if it can be proven that the injury giving rise to the claim is caused or suffered in the course of employment or is aggravated as a consequence of the nature of the work performed, and this causal connection between the injury and the employee can only be established thru the testimony of a physician. Invariably, the physician who appears for the claimant testifies in his favor while the physician who appears for the company gives a contrary opinion. This may appear paradoxical considering that the opinions are rendered in relation to the same medical problem, and yet this phenomenon usually happens. This divergence of opinion places the court in a predicament where it has to make use of its own judgment even disregarding the opinions of the physicians. Such a situation is not conducive to the proper administration of justice. This can be avoided if the physician who intervenes should only give an honest and sincere opinion in an objective manner without regard to the interest of the party he is representing. Only in this way can he help in promoting the best interest of justice. Your organization can do much in doing away with this obnoxious practice for in the last analysis our common objective is to find out the truth.

It is noteworthy to state, however, that the opinion of a physician as an expert witness is not conclusive upon the court. He merely acts in an advisory capacity in the sense that the court may draw its own inference from the facts testified to by him and accept or reject the opinion given. But an opinion given by a physician on a matter which does not come within the common knowledge of laymen carries considerable weight and as such must be correct and truthful. Otherwise it becomes deceitful and may lead to a miscarriage of justice.

\* Speech delivered before the Catholic Physicians Guild of the Philippines on November 17, 1963.

Should a physician be in doubt as to the matter placed under his consideration he should so inform the court. The expression of such an opinion does not constitute a shameful confession of ignorance. It is merely a revelation of the controversial nature of the case at hand. He should bear in mind that his duty is to testify to what he knows to be true and not merely to help the court in deciding the case. This would give the court sufficient basis to decide the case according to its best judgment always having in view the best interest of justice.

Sincerity on the part of the physician is of utmost importance in the litigation of a case. He should not allow himself to sway his conviction simply because of monetary consideration. Some cases may be cited to illustrate the posture of a physician on this matter. Thus, an accused who is completely sane, both from the medical or legal point of view may find that his only hope is to set up the defense of insanity. So he comes to a physician for assistance upon the plea that his only salvation lies in his hands. As unscrupulous physician may submit himself to his bidding for a monetary consideration. Such a situation cannot but bring about a miscarriage of justice. A similar situation may arise when a litigant desires to recover damages in connection with some physical injury he may have suffered by going to court with the assistance of a physician. He may want to recover more than what fairness dictates thru the employment of his technical knowledge. A physician should never lend himself to giving a seemingly expert testimony to accomplish this end merely to earn a substantial remuneration knowing that in doing so he would commit injustice against the adverse party. His motto should always be to help do justice and never to defeat it.

A significant fact that a physician should always remember is that he is a physician, and not an advocate. When a physician is called to testify in court, either as an ordinary witness or as an expert witness, he does not become an advocate; he is a physician and remains a physician. He should not be concerned with the outcome of the case except only in so far as giving a true and full testimony and endeavoring to see that justice prevails.

A physician has a duty to obey subpoena. A physician when subpoenaed may be called as an ordinary witness, a professional witness, or an expert witness. If, for instance, a physician is subpoenaed to testify to something wherein the fact of his being a physician does not enter, he is an ordinary witness; where he testifies on the subject of medicine merely because he treated a certain person during a certain illness, he testifies as a professional or "technical" witness; and where he is asked a question which calls for an opinion evidence, he becomes an expert witness, for he gives an opinion evidence based on his knowledge of medicine.

Yes, my friends, the judiciary needs your whole-hearted cooperation and utmost ability in the administration of justice. You, as an organized body, can improve immensely our medical expert system, not so much for more knowledge among our experts, but especially for more honesty. You should introduce improved methods of procuring and giving expert testimony. And in this regard, allow me to reiterate again the three things which a physician should possess to qualify himself as a medical expert: (1) he must be honest and unbiased in his testimony; (2) he must have real expert knowledge of the particular subject on which he is called upon to testify; and (3) he must study thoroughly the case and must adequately prepare himself by familiarizing himself with the opinions expressed by the authorities on the subject.

Since your profession deals directly with the health of our people the law imposes upon you certain duties and responsibilities which you should observe with care, diligence, skill and ability, lest you may be indicted and held accountable for the conse-

quences of your dereliction and misbehavior. Like other professionals, such as lawyers, nurses and dentists, you may assume civil and criminal liability if you commit gross negligence and misbehavior in the performance of your duties, and if such happens it will mark the end of your career. There is, therefore a great need on your part to observe the canons of morals and ethics that are necessary to enable you to profess your calling with honor and with dignity to insure your success. Our jurisprudence records some pathetic cases which involve the dereliction of some physicians to the great prejudice of your profession.

Our government has recognized the importance of your profession in promoting the health of our people when it approved an Act requiring all schools, public and private, to provide for a physician who may extend free service to our youth. In taking this step our government came to realize that a vigilant and continuous care of our youth is vital to turn out a healthy and robust race. And so it made compulsory the medical clinics in our rural areas for the benefit of our rural people who may not have the means to employ the services of a physician to minister to their ailments. These measures have produced two beneficent effects; one is the health of our youth and our rural folks, and the other a source of employment for our physicians. Our government should be congratulated for having approved these measures which indeed meet a long-felt need in our community.

It may be of interest to you to know whether a physician who has been licensed to practice medicine and surgery can also engage in activities which exclusively belong to the dental profession. A case has arisen in this jurisdiction wherein a physician has engaged in the activities of a dentist upon the claim that his profession also embraces the activities and prerogatives belonging to the profession of a dentist. And so he was investigated and prosecuted and in defending himself against the charge he invoked in his favor some precedents in the United States wherein a physician has been allowed to engage in the activities of a dentist upon the theory that the profession of a physician covers the whole human anatomy and so it can embrace the treatment of the teeth and of the gums which strictly belongs to the profession of a dentist. Indeed, under the laws of some states in the United States the profession of a physician covers that of a dentist and so he only needs to undergo the examination required for a physician. But in this jurisdiction a different situation obtains. The law governing the profession of a physician is different from the law governing the profession of a dentist. These are two distinct and separate professions and our laws require that one should pass an examination for each before he can engage in the practice of both professions, and so the accused was convicted for having encroached on the functions and prerogatives of a dentist. I am bringing this matter to you so that you may know the limitations of your profession and avoid the consequences that such encroachment may heap upon you.

After liberation, the number of schools of medicine in the Philippines increased in an appreciable degree resulting in a substantial increase in the number of those embracing the medical profession. Statistics show that where before the last world war only two medical colleges were in operation the number substantially increased thereafter reaching a total of seven in Manila and in the provinces. As of the school year 1962-1963, the overall number of students enrolled reached a total of 8,798. This increment in the number of medical colleges as well as in the number of graduates that every year are turned out has necessarily swollen to a great degree the roster of physicians in our country during the last decade. Recent data disclose that out of our population of 28 million we have at present 27,572 physicians, male and female, 9,862 dentists, 16,417 pharmacists, and 27,500 lawyers. This shows that there are at present more physicians than lawyers in the Philippines.

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# SETTLEMENT OF LABOR DISPUTES IN INDUSTRIES AFFECTED WITH A NATIONAL INTEREST\*

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RECENTLY WIDELY publicized labor disputes reveal a serious need for re-evaluation of collective bargaining and also of the procedures being used for dealing with critical work stoppages. The initial postulate should be the preservation of the free collective bargaining system. Yet we must be willing to admit honestly that the freedom to bargain cannot be allowed always to prevail. Prolonged strikes in some critical areas cannot be tolerated. Further, we have recently begun to realize that contract settlements without work stoppages in some industries may have such permeating effects on the economy that public concern for the bargain is inescapable.

These considerations make it impossible to define with precision those labor disputes which affect the national interest. There is a broad difference between critical production stoppages and inflationary wage settlements, yet both situations evoke the national interest. In some instances the national interest in labor disputes will be only generally involved, but in others it will be intense and immediately demanding. These

\* Here is the winning paper in the 1963 Ross Essay competition sponsored by the American Bar Association under a bequest from the late Judge Eskine Mayo Ross. Mr. Williams declares that collective bargaining must be nurtured and strengthened so that the drastic measures that might be necessary to settle national-emergency strikes may be kept within narrow bounds.

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differences must guide in the development of solutions to the problems created by these labor disputes.

The first of the two major inquiries in reaching toward the solution of problems posed by labor disputes affected with the national interest is to consider the extent to which collective bargaining can serve this function. The more effective collective bargaining is, the less need there will be for extreme and regimented measures. But the bargaining process will not be effective in every case where the public property is deeply concerned about a work stoppage. So the second major line of inquiry must be into additional needed measures where collective bargaining fails adequately to protect the public interest.

## Collective Bargaining Is Fundamental, but Stagnant

Collective bargaining has been the fundamental national approach to the resolution of economic disputes between employees and employer for well over a generation.<sup>1</sup> Yet the most noteworthy circumstance surrounding our governmental approach to collective bargaining today is that there has been little attempt to improve the process since its creation. Governmental policy-making has constantly been concerned with balancing bar-

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1. National Labor Relations Act, 49 Stat. 449 (1935), as amended, 29 U.S.C. Sections 151-167 (1958); Railway Labor Act 44 Stat. 577 (1926), as amended, 45 U.S.C. Sections 151-163 (1968).

gaged as college professors or doctors in private enterprises are entitled to organize themselves within the meaning of the Magna Carta of Labor which is Republic Act 875. The answer is in the affirmative. It is now settled that doctors, lawyers, teachers, and other professional people can organize themselves into unions if they want to promote their rights and defend their economic security. Medical societies and bar associations are sometimes referred to by laboring peoples as "doctors' unions" and "lawyers' union." It must, however, be born in mind that such right is qualified by the circumstance that the employing institution must be one operated for profit. If the employer is a non-profit organization it does not come within the purview of the Act. This means that while professors can organize themselves into a union they cannot however make use of a strike as a weapon to enforce their demands nor can they file an unfair labor practice charge against their employer. As an example we may cite physicians who are employed in the Red Cross Organization or in hospitals, public or private, that are organized not for profit but for humanitarian reasons.

As members of a respectable profession in our society, your activities should not be confined to the narrow circle of your calling. You must also do your part in promoting the welfare of your community. You must take part in the crusade to which good citizens are now dedicated for the moral uplift of our people. This is especially so at this time when the moral of our youth is at its lowest ebb. In doing so you will not only contribute to the healthy growth of our youth but to the moral and spiritual regeneration of our people.

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Considering the present trend towards the medical profession which beats by a mile other academic professions, the question may be asked: Is there need of moratorium in the study of medicine in the Philippines? Many will no doubt give an affirmative answer bearing in mind that in this era of science, technology and industrialization there is more need of technical and scientific men than men of letters, philosophy, law and medicine. Our country is endowed with rich natural resources which remain untapped and await only the hands of technical men to make them productive, thus contributing to our economic advancement. Technology is the thing we need coupled with the promotion of vocational courses to give impetus to our economic growth and natural wealth. Dr. Juan Salcedo, President of this Association, who is the Chairman of the National Development Science Board, will bear me out in this imperative need for technicians in our country.

But there are many, to be sure, who will differ from this way of thinking, for they know that the study of medicine is as essential to society as the food to men. They will argue that medicine is studied not alone as a *modus vivendi* but to be useful in society and in the healthy growth of our population. In fact, many study medicine not to engage in private practice but to make use of it in the service of the government and in the promotion and conservation of the Filipino race. The truth is that knowledge of medicine is essential to the individual not only for the protection of his health and of his family but also to advance his social stature and culture. Weighty reasons, therefore, exist in favor of the continuation of the study of medicine.

The question may be asked whether physicians who are en-