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Health Legislation: Interpretation Coherent with Conscience and International Human Rights

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I Introduction

Health legislation, resembling its current form, arose from political negotiations between a medical profession seeking monopoly privileges for income protection and the state desiring to secure its population from the threat of epidemic disease (in particular, by quarantine, as under the *Plague Act* of 1604) or injury by 'quacks'.[1] The legislation of Henry VIII, for example, which incorporated the Royal College of Physicians in London in 1523, declared its primary purpose to be protecting the public from unskilled practitioners.[2] The genre of public health legislation which thus developed has rarely been said to create unique problems for statutory interpretation.

Contemporary health legislation, however, increasingly concerns the intricacies of doctor-patient relations and morally complex questions of bioethics. The relevant legislative norms are being created rapidly against a backdrop of complex and interpretively challenging changes in medical research and technology. Frequently cited examples include the possibility of human reproductive cloning, public health legislation (such as that dealing with bioterrorism and unusual infective diseases) infringing on the human rights of patients and doctors, challenges to clinical governance structures (systemic failure to detect and act upon medical error in public

1 Daniel Fox, 'Medical Institutions and the State' in WF Bynum and Roy Porter (eds), *Companion Encyclopaedia of the History of Medicine* (1993) 1204.

2 14 &15 Hen VIII c 5 (1523). *Statutes of the Realm* iii, 2133 Hen VIII c 9 (1511-12) *Statues of the Realm* iii 31-2. 14 &15 Hen VIII c 5 (1523). *Statutes of the Realm* iii, 213, c 5 s 3. *Concerning Barbers and Chirurgians* 32 Hen VIII c 42 (1540) *Statutes of the Realm* iii, 794-6.