

# Law and Medicine

## A Report on Interprofessional Relations

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Most discussions of this nature are usually captioned Medicine versus Law which, of course, is misleading and discrediting to both professions. Many lawyers and physicians work harmoniously for the benefit of their common client or patient. Situations in which the patient is also the client require the best efforts of lawyers and doctors to improve and maintain good public relations. Professional men should be keenly aware of the results of their work in order to continue the independence that has been established in the United States.

Bar associations and medical societies have set up satisfactory procedures to settle grievances of the public against individual members of the legal and medical professions. When both lawyers and physicians are involved in a case, there is no reason why the local bar association and the medical society should not take cognizance of the necessity of rendering satisfactory service to an individual who is both patient and client.

Judge Otis E. Hess of the Hamilton County Court of Common Pleas is an able jurist who is conscious of the public relations that concern physicians, lawyers, and the courts. He knows that a litigant who is dissatisfied with the behavior of lawyers and physicians, or both, after he has gone through an ordeal because of a failure of a lawyer or doctor to cooperate in the presentation of his case, will not hesitate to condemn them and in some cases the courts are severely criticized for permitting such procedure.

Both the Cincinnati Bar Association and the Cincinnati Academy of Medicine decided to embark on a new program in the field of medico-legal relationships. Committees from both organizations met frequently before they scheduled an annual meeting which was held in May, 1952. This was followed by a number of joint meetings and at the second annual meeting in 1953, a set of rules, referred to as Standards of Practice Governing Lawyers and Doctors, was proposed. At this meeting, a physician oriented lawyers about the problems of the physician and a lawyer in turn oriented physicians about the problems of the lawyers. The objective of the program was to have general discussion of mutual problems without giving recognition to formal accusations or indulging in personalities. Almost all lawyers did not know that hospitals schedule their facilities for weeks in advance and that

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physicians could not control the operating schedule. After an explanation, lawyers saw the reason for notifying the physician by telephone when it was time for him to testify in court. Several lawyers said that they had been doing this sort of thing for years and it assisted the physician in maintaining his schedule. On the other hand, it was disclosed that the average physician knows very little, and understands less, about court procedure.

Physicians and lawyers think differently. The physician is limited to prognosticating and predicting results. He is reminded constantly of the almost incomprehensible complexity of the human organism. This affects his thinking. He is unable to use formal reasoning on any given set of facts or symptoms to the extent that it can be used by the legal profession. Allowance must be made for their different viewpoints. Doctor Sidney Shindell, who is both a physician and lawyer, points out this difference in an article published in the *American Medical Association Journal*\* as follows:

It might be useful to view the procedural problems of litigation as the existing means of trying one's rights. Again, the physician and attorney appear in sharp contrast. To the attorney, courtroom procedure is a situation for which he has trained specifically and for which he has spent years perfecting techniques. His task is to persuade a jury to believe his arguments in preference to those of his adversary; to say absolutely, "We find as a fact. . . ." The physician, on the other hand, is entirely out of his element in the courtroom. Except on an academic or scientific level, controversy is unfamiliar to him. He deals in judgments as to probability, not with absolute fact; even a proved scientific fact has meaning only in relation to subjective impressions. To the physician, the courtroom means wasting valuable time to give a carefully restricted opinion, necessarily based on inadequate observation, for persons who cannot understand the details of the problems and who probably will not believe him anyway. His character, qualifications, veracity, or credibility may be attacked, and he may be subjected to indignities by a clever trial attorney. The physician is always at a distinct disadvantage in court, and he must neglect his patients during this time.

Because ethical and conscientious physicians are likely to be most resistant to appearance in court, the lawyer may be forced to accept any so-called expert who is willing to testify. "Professional witnesses," who will testify as experts on any medical specialty are readily available in every jurisdiction. By implication, they cast an unfavorable light on both the legal and medical professions. When

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\*Sidney Shindell, *Medicine vs. Law: A Proposal For Settlement*, THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, Vol. 151, No. 13, (March 28, 1953).

the unscrupulous "professional witness" is pitted against an honest physician, too often the latter emerges second best. Since an active practicing physician has little opportunity to gain courtroom experience, he is not as "courtroom wise" as the "professional witness." It is unlikely that the conscientious physician will be willing to appear in court a second time. The legal profession consequently accuses the medical profession of protecting its members unreasonably by boycotting the courts.

An obvious result of discouraging honest testimony, of course, is the denial of the best possible help for the litigant. Annoyed at the unavailability of legitimate aid for the injured client, the lawyer resorts to use of the "professional witness." Thus, a vicious circle develops consisting of the use of the second-rate testimony since the honest physician refuses to be involved and his refusal to enter a courtroom controversy because testimony of a less honest member of his profession will be unfairly used against him.

Another rather difficult problem preventing harmonious action by the professions is the malpractice suit. This, also, has been discussed by committees from the Bar Association and the Academy of Medicine of Cincinnati. Much has been said but no change in procedure or recommendations have been made. This will take time; however, through the Academy office in Cincinnati, many cases have been settled to the satisfaction of the patient, lawyer and physician. A coordinating influence is vital in bringing about the desired result.

On the other hand, if a lawyer must seek recovery for his clients in the courts, he is confronted with ethical problems before he considers the legal phases of his case. In many cases the ethical lawyer faces a difficult situation. He is not the court. He does not make the decision on the facts of the case. His duty is to represent his client in the best possible manner. On close questions of fact, he might be in error, but he feels that the petition should be filed to give his client the benefit of the doubt. In contrast, the physician thinks that the lawyer is building a case against him and he cannot understand how there can be grounds for legal action. To him, it appears a simple matter of medical judgment which, in his own evaluation, is the best medical service that can be rendered. He cannot conceive that his treatment might have been a probable cause for the patient-client's physical condition. The physician also feels that even when he wins the case legally, he loses his prestige in the community because of adverse publicity.

Therefore, it seems that basically a new court or arbitration procedure should be devised in order to determine: (1) how the public can be assured of the right to recover for injury, (2) how

cases involving personal injury can be handled expeditiously, (3) how honest medical testimony can be assured, (4) how the legal profession can be assured that there will be no unreasonable protection or whitewashing of incompetent physicians, (5) how the medical profession can be protected from unwarranted attack and unsavory publicity by unjustified suits, (6) how procedure can be modified to conserve the time of the physician, lawyer and patient, as well as that of the court.

In several instances the following procedure has been suggested:

1. A board of physicians and lawyers would be appointed for the purpose of submitting stipulations of facts in justiciable cases. All appointments would be subject to the approval of the medical society and bar association.
2. In case of disagreement, resort could be had to arbitration or standard trial procedure.
3. Sanctions could be imposed by the courts against the bar and by the medical society or state medical board against members of the medical profession.

Some of these suggestions are not practical. (1) While sanctions may appeal to a majority of professional men, it is not a satisfactory method of obtaining results for litigants who are involved in the costly procedure of fighting a court case; (2) there are bound to be disagreements and it seems advisable to work on the practical aspects of medico-legal relationships rather than an idealistic theory; (3) it is certain that if the parties are permitted to withdraw from a procedure which cannot be used to enforce a finding against them, the information gained may be used as an advantage over the other parties who made disclosures at the preliminary hearing. It seems that a successful plan must have a legally binding force or be authoritative in the control of professional men with their patients and clients. A program of this nature cannot be worked out within a few weeks or months. No doubt, it will take several years before physicians in any community are familiar with the problems of the legal profession in conducting court cases and the same is true when a lawyer considers the problems of the medical profession.

The Cincinnati Bar Association and the Academy of Medicine of Cincinnati have adopted the Standards of Practice Governing Lawyers and Doctors. The preamble of these standards is as follows:

“Acknowledging that a substantial part of the practice of law and medicine is concerned with the problems of persons who are in need of the combined services of a lawyer, doctor and hospital; and that the public interest and individual problems in these circumstances are best served only as a result of standardized cooperative efforts

of all concerned; we, the members of the Cincinnati Bar Association and the Cincinnati Academy of Medicine do adopt and recommend the following declaration of principles as standards of proper conduct for lawyers, doctors, and others concerned, subject always to rules of law and standards of legal and medical ethics prescribed for their individual conduct."

Already an agreement has been reached on the reports that are to be furnished by physicians, the procedure that is to be followed when a physician is called to testify as a witness, and the procedure that is to be used in determining the amount of the physician's fees as well as the items for which he can and cannot charge.

In the years to come, other Standards of Practice will be adopted. Of course, it will take a pilot plan of procedure on the complicated subject of malpractice actions. Actual experience must be had in the administration of any procedure. The pilot plan should be developed to fit the needs of lawyer, doctor, client and patient. Its development will improve the relations that exist between doctors and lawyers and establish a medium for the public when they have a just cause for legal action without impairing the prestige of the physician unjustifiably; and, if a mistake is made, it can be rectified without penalizing the physician for the remainder of his career.

The public interest is of primary concern and the legal and medical professions must control their behavior to insure fair and adequate consideration.