EDITORIALS

The Physician and Malpractice Suits

In the last decade, physicians have become intensely interested in the legal aspects of the practice of medicine. Much of the interest probably stems from widely publicized judgments granted in a few celebrated cases, or perhaps from the frequency of medicolegal suits filed in certain geographic regions. The threat of a suit and appearance in a courtroom incites terror in the average physician. This is readily understandable—no one likes to admit publicly to having made a mistake, or to face a brutal cross-examination. The possibility of exposure to embarrassment and to impeachment while on the stand is a fate to be shunned. The average physician, though highly educated in his field, seldom understands the reasoning behind the procedures of a court. The rules of evidence to him seem ridiculous. In his opinion, the suit in malpractice has become the *bête noire* of the law: it is to be settled out of court at all costs.

Few lawyers will deny that the jury sometimes arrives at an unwarranted verdict. However, this miscarriage of justice is the exception and not the rule. In truth, most of the fear and uncertainty of the physician *vis-à-vis* the law is groundless. Courts and lawyers are not hostile to physicians. The courts stand as the neutral disinterested arbitrators between two opposing parties: patient *v.* physician. Court procedure is rigidly regulated according to the strict rules of evidence. Finally the jury decides the facts, and determines the extent of injury if any. Notwithstanding frequent attacks, no better system of justice than that in the United States has yet been devised.

Malpractice actions are not common, indeed, malpractice is rare. But, physicians can be careless. Indeed, many of us have had automobile accidents. Often it has been the result of our negligent driving. Yet, many of us practice medicine for a lifetime without being party to a medicolegal suit. Mind you, this is not to say we have not been careless at times and as a result of this carelessness have injured a patient. In such instances, the patient seldom realizes that he has been the victim of a careless act, and it may even be impossible to prove negligence in court. But, trouble may occur when the patient hears of the injury through casual talk with hospital personnel. If the injury is extensive or serious, it is little wonder the patient is angered when he realizes that the real cause of the injury is being withheld from him. He and the courts look askance when trust is thus betrayed. Therefore, in most instances, when a physician accidentally and carelessly injures a patient, he should soon make a full and honest disclosure to the patient. Injury due to a careless act is compensable. This is the reason physicians carry malpractice insurance. However, in the vast majority of cases, where the physician-patient relationship is truly established, and, indeed, where full disclosure is made, no litigation results. What is more important, when the physician has negligently injured the patient, and suit is threatened, settlement out of court must be considered.

On the other hand, an unjustified claim may be instituted against a physician. This must be opposed with all the resources available. The case should be brought before the local medical society's malpractice panel, whose help and counsel are invaluable. In court, the case should be argued by competent legal counsel—a specialist in malpractice defense who has experience in this field. Lawyers specialize just as do physicians. No anesthesiologist would permit another physician, untrained and unfamiliar with anesthetic agents to render him unconscious for a surgical operation. Yet oftimes this very undersirable situation occurs when the physician is "operated upon" in court. He is represented by inexperienced counsel who tries a malpractice case very occasionally or as a once-in-a-lifetime experience. There is great merit in the system

employed in Canada where all malpractice actions are handled by the physicians' own mutual insurance carrier. Their staff of attorneys, trial experts who handle only malpractice actions, defend every suit instituted. Employing such a system, the defenseless suits are settled out of court thereby avoiding bad legal precedents. The unjustified claims are fought by experts. Defended by expert lawyers, the medical profession will not be blackmailed into settling poorly founded cases upon threat of suit.

CARL E. WASMUTH, M.D., LL.B.
Department of Anesthesiology
The Cleveland Clinic Foundation, and
Director of Medical Affairs
Cleveland-Marshall Law School

Tubular and Peripheral Vision in the Practice of Anesthesia

THE practice of anesthesia can be one of the most intriguing and stimulating medical specialties. Yet one of the more disappointing aspects of the specialty is the tendency of many practitioners to restrict their professional activities and treat their practice as a vocational function.

Bronowski, in an article in *Science* (April 27, 1956) on the "Educated Man in 1984," expresses the tendency to vocationalism in this fashion: "The young man at night school learns bookkeeping in order to keep books. An engineering student learns the calculus in order to become an engineer. A historian learns medieval Latin or order to read documents. [Bronowski learned Italian in order to read papers in mathematics.] These are examples of education for a very specific purpose, and since this purpose often helps us to earn our living, I [Bronowski] think of this as vocational education."

The search for education of a vocational nature seems at times to be motivated by a desire for security. One learns mathematics to be a bookkeeper at a fixed and regular wage; one aspires to be an engineer to compete successfully for a position with a large company with good wages, fringe benefits, regular vacation and guaranteed retirement; and one learns to be a physician to be assured of a good income and an easy life. Apparently, some anesthetists are content to acquire just enough knowledge to enable them to operate a gas machine, determine the proper dose of a new drug and satisfy the surgeon. Deliberately or unwittingly they fail to take advantage of many opportunities to promote and continue their education by overlooking the intriguing yet elusive processes incident to anesthesia. They are content to "vocationalize."

People with these motivations may be afflicted with "tubular vision." An anesthetist with a tubular approach to his practice has his attention focused on a limited field and is oblivious to all the fascinating items to which his brain might be receptive if given the opportunity. Those who take full advantage of their peripheral vision are more apt to have their brains stimulated and their fund of information enhanced by becoming aware of and exploiting the opportunities that exist.

By exercising their peripheral vision, anesthetists may find opportunities to augment their education for a different reason, such as is also expressed by Bronowski. He states: "But I knew a man once (he was a schoolmaster who had just retired from teaching mathematics) who learned Italian in order to read Dante. You will see that what he learned was indeed precise, and the purpose for which he learned it was specific. [And yet, Bronowski does not believe this to be vocational education.] The learner was not fitting himself for a task, as if he had been a literary critic by profession. He was fitting himself to derive from the work of Dante a larger, a deeper sense of the many-sidedness of human life that had reached and stirred him in translation. He was fitting himself, even at the age of 65, not to make a living but to live, and to take not merely his place but his share in human society."

A person who explores the opportunities