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Interprofessional Relationships

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Interprofessional Relationships*

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Interprofessional relationships between Montana lawyers and Montana doctors appear to be about the best in the nation. This cordial relationship between the two professions might be attributed to the small but stable Montana population, the traditional friendliness of the people, and the exceptionally high caliber of the practicing lawyers and doctors. If the relationship is so good, it could be said this paper is unnecessary. This writer, however, looks with anxiety at the apparent cleavage between the two professions in our sister states. There are areas of misunderstanding in Montana which must not be allowed to enlarge. The scope of this paper includes answers from a questionnaire sent to forty Montana doctors. The answers in the main are summarized and commented on; some answers are quoted. The questionnaire is appended at the end of this article and its short-comings are admitted. It was feared that longer, more detailed and searching questions would end up in the wastebasket.

While doing research on the subject of the doctor-lawyer relationship, I found that in 1960, the American Bar Association in cooperation with the American Medical Association, sent a questionnaire to 8,600 attorneys. These attorneys were queried regarding their work with physicians and surgeons. The return of 4,993 was considered an excellent response. Seventy percent considered their relations with doctors good.[1] The survey revealed that 92 percent of the lawyers said they required expert medical testimony in their practice of law. This is not surprising because earlier studies have shown that 65 to 80 percent of all litigation in the courts requires some type of medical report or testimony.[2] If seven out of ten personal injury cases are decided on medical considerations, and nine out of ten attorneys require the aid of doctors in their practice, it would appear to be of paramount importance that the two professions understand and respect each other.

I have been unable to find any instance of a similar questionnaire being sent to members of the medical profession to determine their feelings towards the legal profession. This writer composed the questionnaire found at the end of this article which was mailed to forty Montana doctors. An effort was made to select doctors of different ages with various types of practices, and to obtain a spread of geographic locations. Only doctors from large and medium-sized cities were chosen since interprofessional contact is more likely to occur in such areas. Eighty percent of the questionnaires were returned with answers varying from very curt and brief to several pages long.

The number of doctors questioned may at first glance appear to be

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[1] *Status of Medicolegal Cooperation*, PROCEEDINGS, REGIONAL MEDICOLEGAL SYMPOSIUMS, March 1961, pp. 15, 16.

[2] *Id.* at 16.

small, but considering the number of doctors in Montana, the number who are likely to have experiences with attorneys, and the eighty percent who answered the questionnaire, it is my opinion that I obtained a reasonable sample of the Montana doctors. It is hoped that this article will stiumulate the preparation and distribution of appropriate questionnaires to a larger sampling. This might be a joint state-wide project of the Montana Medical Association and the Montana Bar Association. It is clear to me and I think to you that the answering doctors just do not understand the adversary system of American Law. The medical profession does not understand the "rules of the game," any more than lawyers would understand the many apparently senseless maneuvers and "don'ts" which attend surgical operations. The distinguishing feature is that lawyers are not asked to assist at operations while doctors are asked to assist in court cases. This same thread of incomprehension of the adversary system on the part of doctors runs through many of the subsequent answers. But whose fault is this and what are we going to do about it? It could at the same time be said that many lawyers have just as meager an understanding of the medical profession.

The first question asked was: "Have you had experience with lawyers at hearings or trials?" The answers indicated that 87 percent had had such experience. Sixty-seven percent of this group gave unqualified approval of the way lawyers had treated them during their court appearance. In describing their courtroom experience they used such terms as "calm," "dignified," "cooperative," "helpful," "professional." Twenty-three percent thought their treatment had been fairly satisfactory. There were ten percent who felt that the expert witness was made to feel that he was on rial. Four doctors indicated that they believed that the attorney, through skillful courtroom technique, sought to conceal or keep out of court what the doctor thought to be vital information necessary for an equitable conclusion in the case. This same group disliked the attorney's attempt to influence the court by histrionics, semantics, gimmicks, demonstrative prejudicial evidence, and issues unrelated to the case. Two doctors commented on the seeming lack of understanding by the legal profesion of the doctor's difficulty in describing certain pathological processes in layman's language. Only one doctor complained about the lack of concern by the attorney for the time the doctor wasted in the court or in the corridors waiting to be called to testify. The time lost waiting to be called to the stand formerly was a commonly heard complaint. But it is noteworthy that judges and attorneys have sought to conserve the time of the medical profession, *i.e.*, getting them on and off the witness stand with a minimum of delay.

The second question: "Do you believe that Montana lawyers and doctors enjoy a good relationship?" Parts (a) and (b) of the question asked for recommendations for improvement on the part of lawyers and on the part of doctors. Eighty-five percent of those answering the questionnaire thought there was a good relationship. The following represent a few suggestions made as to how lawyers could improve the relationship: "Do not file suits without getting sufficient facts to indicate a cause of action." "Refrain from making personal attacks on the doctor witnesses if the case does not go well for the particular attorney." "Pay promptly for medical reports and examinations requested by the attorney from the doctor." Five doctors complained about this slowness in paying for report preparation

while two complained quite vigorously that they were not paid at all. Eight doctors complained about the practice of a certain lawyer telling his clients that he would have won a larger award if their doctor had been more sympathetic. The truth of the attorney's statement cannot be doubted. Three answers indicated dissatisfaction with the philosophy that it was the duty of an attorney to win all the monetary award he could for his client without regard to what was "just." It should be noted that I am merely reporting, and it is the feeling of this writer that, correct or not, the fact that some of the members of the medical profession think as they do is worth discussion.

Part (b) requested comments from doctors on how they thought they could improve their interprofessional relations with lawyers. Eleven doctors stated that there was a definite need for a more complete preparation by both doctor and lawyer of all aspects of cases before going to trial. In particular they thought there was great value in pre-trial conference between doctor and lawyer. Six answers stressed the fact that the doctor must remember that the lawyer has a job to do and it is the *duty* of the doctor to assist if he is able but at the same time remain objective and honest. Attorney Franklin S. Longan, writing for the *Montana Law Review* said, "I urge both physicians and lawyers to take a sensible view of their own work. We think our own particular job is so important and cooperation with each other is not too important. Actually there is a common bond between us. Health and justice are human values. . . . I hope that physicians will learn to take the viewpoint that legal care may be as important to their patients as medical care, because their patients are thinking in terms of money more so than of the state of their health the very minute the physician tells them that they are, or are not going to get well. . . . We lawyers are anxious to be better lawyers. We also want physicians to be better medical witnesses, but *that's the lawyer's job.* [Emphasis added]. Both professions can be twin blessings to the public if we make them so."[8] This excellent article should be very beneficial reading for every doctor who must make a court appearance. Two doctors wrote that the medical profession must not try to "whitewash" a doctor who is guilty of causing harm to his patient. One doctor, in apparent agreement with the passage quoted from the article by Mr. Longan, advised members of the medical profession that their duty to their patient did not cease with the curing of his medical ailments, but might extend to helping him get a just award in court. One answer cautioned the medical profession to get off its pedestal and learn to communicate better with courts and juries. Another answer advised medical societies to reprimand doctors who are giving questionable medical testimony and excessive disability ratings. Five answers recommended frequent and friendly communication between the two professions. One answer pointed out the not infrequent inability of the medical witness to give a "yes" or "no" answer to a question. He stated further, "many times we just don't have an answer or a definite diagnosis." Many of those answering the questionnaire, consciously or unconsciously separated plaintiff's attorneys from defense attorneys, with most of their criticism directed at the former. It should further be noted that the compliments were directed to the entire body of lawyers while the criticisms were directed to a few. As one man

[8]Longan, *Preparation of Medical Testimony*, 17 MONT. L. REV. 142 (1956).

put it, "lawyers as well as doctors have their unethical and inconsiderate members."

The third question was: "Do you believe the average Montana lawyer appreciates the complexities of medicine as it is practiced today?" Here we find the first real split in opinion, with 50 percent answering "yes" and 50 percent answering "no." One physician thought that the lawyer who handled a large percentage of medical-legal cases could not fail to understand the complex nature of modern medicine. One thought the Montana Bar Association should have a grievance committee similar to that in the medical associations. Three answers indicated that as long as there remained good profit for the attorney in successful malpractice suits, there would be cases accepted and suits filed regardless of their individual merit. One doctor stated that the medical profession was not being realistic in thinking that because a lawyer called on a doctor when he was ill, respected him, and knew full well from his own experience the uncertainties of the healing art, that that same lawyer would be deterred in accepting a professional liability suit against the same doctor. One doctor thought there should be more medical-legal conferences to discuss mutual problems. Yet another doctor thought such panels and meetings should be discontinued as they serve no useful purpose for the doctor. Two doctors stated that in their experience, a frank discussion of the threatened professional liability case and the problems involved with the plaintiff's attorney resulted in a dropping of the intended suit. It might be well to mention that insurance companies take a pessimistic view of their insured doctor sitting down to chat over the facts of the case with the plaintiff's attorney. However, with the application of the new rules of civil procedure and discovery methods, there should be fewer surprises for either side. One replying physician stated that he did not think the legal profession understood the complexities of the modern practice of medicine, and arrived at his conclusion on the basis of lawyers insisting on a "yes or no," "black or white" answer to medical questions. Reference to this same problem seemed to crop up in many of the answers. Dean Harold F. McNiece stated it would help reduce conflicting medical testimony in compensation litigation if medical groups would issue authoritative statements on the latest knowledge pertaining to causal factors in cardiac disease. He attributed difficulties in medical testimony to lack of understanding of legal terminology by the medical expert and to lack of understanding of medical terminology by the attorney.[4] It is my opinion that it is fortunate for the health of America, as well as for the progress of medicine, that we have no such State or National Supreme Court of Medicine to issue authoritative statements as suggested by Dean McNiece.

No paper of this type would be complete without reference to the doctrine of *res ipsa loquitur*. Although *Black's Law Dictionary* does not define the doctrine quite so briefly, that eminent authority, *The Saturday Evening Post*,[5] defines the doctrine as: "someone obviously goofed." Cleveland attorney R. Crawford Morris in discussing this problem cites a 1960 malpractice suit, in which a California court said: "The requirement for explanation is not too great a burden to impose on those who wield the in-

[4] 2 MEDICAL TRIBUNE 31 (Nov. 1961).
[5] April 11, 1959, p. 13.

strument of injury and whose due care is vital to life itself. The court need find no more than that there are sufficient facts to permit the jury to draw inferences of negligence on the doctor's part." Mr. Morris commented: "The trouble with this kind of decision is it hurls the doctor into the *lion's den of jury speculation* about complicated medical facts. Often the facts are so complicated they're over the lay juror's head."[6] Mr. Morris went on to say, "The doctor's conduct in a complicated medical situation, difficult to understand is judged not by his fellow doctors, but by twelve lay people. . . ." In a 1960 New York case,[7] the defendant doctor had inserted an instrument called an esophagoscope into the patient plaintiff's esophagus for the purpose of examining its interior surface. The doctor testified that he had performed 2,000 such procedures without mishap. This time on reaching the narrow place in the esophagus, as was his custom, he pushed on the tissue with the end of his slowly advancing instrument for the purpose of determining whether the narrowing was due to spasm of the muscle or a true stricture. In this case the pushing plus the unknown weakness of the tissue resulted in a rupture of the esophagus. The court held that it was proper to apply the doctrine of *res ipsa loquitur,* thus imposing upon the doctor the burden of proving his freedom from negligence. The court said that the fact of the rupture was sufficient to present a *prima facie* case of negligence which, if unrebutted by the defendant, would result in a finding for the plaintiff. The doctor proved he was not negligent and won a verdict. In a recent California case,[8] a patient became paralyzed from the waist down following injection of dye in to a vessel. This dye was the type customarily used. The trial court applied the doctrine of *res ipsa loquitur* and held for the plaintiff. On appeal, the verdict was reversed on the ground that the doctrine of *res ipsa loquitur* was not applicable. A third case, *Ayers v. Parry,*[9] concerns a patient who alleged that some weakness and some paralysis of his leg resulted from the use of spinal anaesthesia. The lower court held for the defendant doctor. The appellate court affirmed, stating that "*res ipsa loquitur* does not apply in malpractice cases where the injury is one which may occur even though proper care and skill are exercised. . . . [nor where] common knowledge or experience is not sufficiently extensive to permit it to be said, that the patient's condition would not have existed but for the negligence."[10] Now let us consider these three cases, the rupture of the esophagus, the paralysis of the lower half of the body, and the partial paralysis of one leg. In each case the doctor won the verdict, but only after appeal and expensive litigation. In each case a *poor medical result* was the basis for commencing the suit. The care rendered by the doctor has produced an injury for which the patient seeks compensation. At these trials there was an attempt to utilize the doctrine of *res ipsa loquitur* with the hoped-for result of absolute liability.[11] Are courts leaning towards the code of Hammurabi which permitted a decree to cut off the physician's hands if his surgery caused loss of an eye or the life of a freeman? Or are they leaning towards the absolute liability accorded to

[6]PROCEEDINGS, REGIONAL MEDICOLEGAL SYMPOSIUMS, Mar. 1961, p. 74.
[7]Klein v. Arnold, 203 N.Y.S.2d 797 (1960).
[8]Salgo v. Leland Stanford University Board of Trustees, 154 Cal. App. 2d 560, 317 P.2d 170 (1957).
[9]192 F.2d 181 (3d Cir. 1951).
[10]*Id.* at 185.
[11]Prosser, *Res Ipsa Loquitur in California,* 37 CALIF. L. REV. 183 (1949).

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common carriers? Will these three physicians use the same procedures in the future? If they have another "mishap" and another poor or unsatisfactory result, can they be sure they will win their case? What does it cost in money, time, and reputation to defend such a suit? Though each doctor won his suit, will the doctor who pushed on the esophagus be discouraged from pushing on any more narrow areas in an esophagus in order to rule out spasm from true stricture because he does not relish another suit?

Will the doctor who was sued for the paralysis following the aortogram be discouraged from performing another such examination despite its being a valuable diagnostic procedure?

Perhaps the real issue is: Should these cases have gone to court? Could these cases have been prevented from reaching the suit stage by careful investigation by plaintiff's counsel? Could this type of case be entrusted to an impartial panel of medical experts? I often recall the words of the revered attorney Mont Duncan of Virginia City, Montana. He said to my father when I was about 10 years old, "Any fool can start a law suit; it takes a smart lawyer to prevent a suit and a smarter lawyer to stop one after it gets started."[12] It is unfortunate that such wide newspaper publicity is given to the filing of an action for astronomical sums against well-known professional men, and such a little coverage, if any at all, is given to the same suit when it is dropped, dismissed, held in favor of the doctor, or settled for a fraction of the sum originally demanded. Emil Seletz, M.D., Chief of Neurosurgery at Cedars of Lebanon Hospital, and faculty member of the University of Southern California Medical School, referred to ill-founded suits as legalized blackmail which sometimes the insurance companies and the defendant doctor find better to settle out of court for a small sum than to fight.[13] There is a trend by some newspapers to refuse to publish information relative to malpractice litigation until after a decision has been reached by the courts.[14]

It would appear that I have been too concerned with the medicolegal problem of professional liability and have neglected the important problem of medical testimony by impartial medical witnesses in personal injury cases. The reason submitted is that the attorneys will solve and are solving the problems of medical testimony. Much is being done by both professions to correct the problem. Rotating panels of doctors have been formed to be used by the court or by stipulation of opposing attorneys. California has a statutory provision providing for appointment of impartial expert witnesses in any criminal, civil, or juvenile court action where it appears to the court that such expert testimony is required.[15] Medical experts are paid with county funds. This method has worked well in Los Angeles County, when we note that in 1960, 1,703 cases were placed on the calendar. Of these, 1,126 were settled on the spot and never reached the trial calendar.[16]

Question number 4: "Does it disturb you that lawyers are never or seldom sued for malpractice?" Thirty-two percent answered "yes." Fifty-

[12]Montgomery Duncan, Attorney at Law, Virginia City, Montana, deceased.
[13]12 M.D. MEDICAL NEWS MAG. 55 (No. 4, Apr. 1958).
[14]Frankel, *Trends in Medical Professional Litigation*, PROCEEDINGS, REGIONAL MEDICOLEGAL SYMPOSIUMS, March 1961, p. 274.
[15]Cal. Code of Civ. Pro. § 1871 (Deering, 1951).
[16]Bauder, *Impartial Medical Testimony Projects*, CAL. REGIONAL MEDICOLEGAL SYMPOSIUMS, 1961, pp. 160, 161.

five percent answered "no." The comments of those answering "yes" included the statement that lawyers protected each other. Attorney Truman B. Rucker of Tulsa, Oklahoma said, "Conceive an idea where the doctors could sue the lawyers for malpractice and that would really stop it."[17] There appears to be little research on the subject and I cannot give you citations, but the practice of law appears to be legally safer than the practice of medicine. One might conclude that either doctors are a careless lot or they are in a hazardous undertaking. We might also conclude that lawyers are seldom negligent. Perhaps both professions are composed of humans who dislike to stand before their colleague and state, "You are negligent because you did not perform this act as I would have done it." Of the returns to question four, two doctors gave no answer at all, one played it smart and answered yes and no; one said it had never entered his mind and he refused to let me put it there by my question. Of the 55 percent who said it did not disturb them, one admitted he was jealous of lawyers who could carry low-rate malpractice insurance. One answer was quite philosophical, stating there were benefits in both professions. One answer pointed out that the lawyer-client relationship was not the same as the doctor-patient relationship. In the former, the jury, judge, or witnesses make the mistakes, if any, and the attorney always does his best, while in the latter, the doctor has trouble finding a scapegoat. One doctor who did not sign his name wrote that he thought it was wonderful that lawyers appeared to have respect for each other and tried to avoid suits against each other. One answer congratulated the members of the legal profession for their seeming immunity to suit. Another replied that two wrongs did not make a right, and he hoped lawyers were never placed in a position similar to that of the doctors. One qualified his answer and begged the question by stating that ethical lawyers should not be sued while unethical lawyers should be sued. One doctor replied that while it did not bother him, he did think "lawyers had a certain implied immunity to suit and that this was perhaps real, but probably imaginary." He sounds to me like a lawyer working for the state department. My own opinion is that if we were to increase suits against lawyers (don't ask who "we" represents) it might lawyers more careful (that's what lawyers tell doctors), might give more lawyers ulcers, cause more lawyers to imbibe alcoholic beverages, raise their insurance rates (it's tax deductible), increase burdens on the courts, give newspapers more headlines, make a few doctors feel they were not alone in their vulnerability, but, actually, would serve no useful purpose. I would be satisfied if the suits filed against doctors were more carefully chosen, and heartily agree with Attorney James E. Ludlam: "They (attorneys) have an obligation to assume that both hospitals and the doctors have acted in good faith for the best interest of the patient. *A bad result is not in itself evidence of improper conduct.* The fact that most malpractice claims against hospitals and doctors prove invalid establishes clearly that attorneys are not properly reviewing claims before filing suit. This in itself would not be a matter of concern if it were not for the harm done to both hospitals and doctors by the continued publicity over filed cases, most of which prove groundless. As professional groups we must

[17]Rucker, *Liability Without Fault in Personal Injury Litigation*, PROCEEDINGS, REGIONAL MEDICOLEGAL SYMPOSIUM 196 (1961).

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assume responsibility for our mistakes, but we are also entitled to mutual respect. "Any lawyer who files a suit against a doctor or hospital without reasonable investigation or who has not contacted the hospital or the doctor to hear both sides of the case has committed unethical conduct and professional malpractice."[18] (Emphasis added). I didn't say that. A practicing attorney said it and better than I could have. It would seem very practical to adopt more often the tactics reported to have been used by a federal district judge who was about to hear a case involving division of a fee between two lawyers. This astute judge firmly advised the litigants to repair to the corridor and settle their dispute because he did not want his court cluttered with the quarreling of his brother professional men. The two lawyers obeyed and the newspapers were deprived of a story.

Before taking up the final question in the survey, and at the risk of being repetitious in the discussion of malpractice, a quotation from an address by a recent past president of the American Medical Association appears to be in order. Speaking before a group of lawyers, judges, and doctors, he said, "If the present trend continues and if a physician must become increasingly apprehensive of legal suits, his own aggressive instinct will inevitably in some measure, overcome his humanitarian and professional motivations. Such a doctor will be inclined to give too much time to protecting himself and less to the care of his patients. He may hesitate to assume responsibility in cases where prognosis is poor. He will have a tendency to omit highly successful, but slightly dangerous medical procedures. Whether medically indicated or not he will exhaust every possible laboratory aid in every case; he will at the slightest indication bring consultants into the case; he will prefer to keep the patient a longer time in the hospital than is necessary. By these means although the cost to the patient is increased, the hazard to the attending physician will be reduced."[19]

The final question in the questionaire to be discussed is: "Do you think too many industrial accident claims end up in the attorney's office?" Eighty-seven percent said "yes" and 13 percent answered "no." Briefly stated the reasons given were: "Loose talk by the physician in front of the injured patient workman regarding his right to and need for compensation." "The workman does not trust himself to settle without legal advice." "The board is not functioning as the legislature intended it should." "The board appears to be regarded by the workman as his antagonist and not his duly appointed representative." It would seem that the board has an obligation to clearly inform the workman of his rights and the various solutions or choices he may make. Rule 27 of the 1957 booklet setting forth the rules of the Industrial Accident Board states the following policy: "Any workman or beneficiary filing a claim for compensation will have the claim thoroughly investigated and evidence presented in such claimant's behalf by the Board *without the necessity of the employment of an attorney.*[20] (Emphasis added). Nevertheless, those of you who are familiar with the sequence of happenings following a substantial injury with permanent disability know that the case somehow or other ends

[18]Ludlam, *Changing Legal Status of Hospitals*, PROCEEDINGS, REGIONAL MEDICOLEGAL SYMPOSIUM, 1961, pp. 282, 283.
[19]Cline, *Status Medicolegal Cooperation*, PROCEEDINGS, REGIONAL MEDICOLEGAL SYMPOSIUM, 1961, p. 191.
[20]WORKMEN'S COMPENSATION LAW AND RULES (1957).

up in the hands of an attorney. A substantial number of those with permanent impairment as a result of an injury received in the course of employment have the idea that the way to get action from the board is to hire an attorney. Getting back to the questionnaire, one doctor felt that the claims were settled to the advantage of the lawyer and not the patient. One suggested he thought there would be a lessening of litigation if there were an impartial three-man board set up by legislative act, such board to be composed of a lawyer, doctor, and insurance man. One answer pointed out that it was the legislative intent that the board always act in the best interests of the injured workman and that such action would include keeping him informed of his rights at all times. Four answers claimed that the Industrial Accident Board appeared to prefer to deal with attorneys rather than the injured workman. This same group thought the board was quite conservative with their funds when dealing directly with the workman but seemingly more generous when dealing with the claimant's attorney. The following solution was suggested: "reasonable liberality by the board when dispensing funds directly to the workman, but at the same time vigorously defending contested claims." That will not be a popular suggestion. Of the doctors who answered "no" (that not too many I.A. claims end up in the attorney's office), one suggested that it was the only practical way to insure the workman an adequate award. Another argued that often the workman's claim was so nebulous or indefinite that it required a trained legal mind to insure a proper recovery for the injured workman. If I may comment from personal experience, I can vouch for the fact that many industrial accident compensation claims are difficult to process because of three main problems with many influencing factors. 1. Was the workman injured; if he was injured, was it an injury covered by the Act and was it received in course of employment? 2. Is there a permanent disability? 3. How should the amount of the award be determined? It must be disturbing to the board after sending a dissatisfied workman to as many as three physicians only for the purpose of obtaining a rating and to get back three reports from these three doctors all examining the same man, one rating him 20 percent disabled, the second doctor rating him 40 percent and the third 60 percent or more. (The percentages always appear to be even numbers). Now which figure will the board choose? The chairman of the board, who by the way has read so many doctor's reports and held so many hearings that he uses medical language with ease and familiarity, has told me that the board is no longer surprised when they find an allegedly permanently injured workman, who has, only a short time before been awarded a large sum for his inability to return to his previous type of employment, now working uncomplainingly in an even more arduous type of work.

After such a questionnaire and my many comments, I would make some recommendations:

1. Let us establish annual social and educational meetings between the members of the legal and medical professions. The doctors and lawyers of Billings, Yellowstone County, have been having such meetings for some years and they report it works very well.

2. Establish grievance committees that really take their duties seriously.

3. Establish an integrated bar.

4. Consider establishing a mediation board composed of medical experts and lawyers to screen possible professional liability cases before filing suit. Establish rotating panel of expert medical witnesses for use by court or attorney in personal injury pre-trial conference.

5. Adopt an interprofessional code of conduct as was done in the state of New York and by the American Medical Association and the American Bar Association.

6. Work for and insist on better preparation for trial by both lawyer and doctor as suggested by Franklin S. Longan.

7. Avoid forming an opinion of either profession based on the one or two percent of unethical members within it.

8. Professional liability suits should not be filed without prior medical examination of the facts by an impartial panel to determine reasonable justification for the suit.

9. Some fact finding agency of the Industrial Accident Board should be composed of a lawyer, doctor, and perhaps someone with economic and actuarial knowledge or experience.

10. The Industrial Accident Board should give each injured employee-claimant, within 48 hours of receipt of his report of injury, an easily understandable explanation of his rights under the law and of the protection and benefits which the board is prepared to administer in his behalf.

11. Doctors from within their own organizations must work for a better relationship with lawyers and show a willingness to testify and place their special knowledge at the disposal of the attorney.

12. The reports requested from a doctors by a lawyer should be sent promptly and be complete. Reasonable charges should be made for services requested by an attorney. The attorney requesting such services must guarantee payment to the doctor regardless of the outcome of his case. The doctor should have no contingent monetary interest in the suit.

13. Neither profession should disparage or talk loosely about the other, particularly to laymen.

In summary, it was pleasing to find from the questionnaire that the doctors sampled thought very highly of their brother lawyers. There is always room for improvement, and we don't want our interprofessional relationship to deteriorate. Recently a lawyer asked me why the word malpractice seemed to cause such an elevation in a doctor's blood pressure? I replied that not being a corporation, we took things in quite a personal way and that there was a suggestion of moral turpitude in any such suit. *Black's Law Dictionary* defines malpractice as "any professional *misconduct,* unreasonable lack of skill or *fidelity,* in professional or fiduciary duties, *evil practice, or illegal or immoral conduct.*" (Emphasis added). Now a charge of unreasonable lack of skill is bad enough, but acceptable, but when you add those italicized words it sounds like a felony. It brings to mind a solution to our problem found in Shakespeare's *Henry VI.* While the rebel Jack Cade was discussing what they would do as soon as they diposed of the king and his army, Cade told his band that he would as his first act in office dispose of all money, everyone would live off the state,

all would dress alike, and thus better think alike. Dick the Butcher then said, "First thing we do, let's kill all lawyers."[21] To sum up what I have been trying to say, I prefer the words of Henry Clay, great law-maker and senator. On the floor of Congress, Clay said: "It would not be thought very wise or just to arraign the honorable professions of law and medicine because one produced the pettifogger and the other produced the quack."

The following is the questionnaire mailed in connection with the foregoing address:

Signature at the end of this questionnaire is optional. The sources of this information will be held confidential and not published. Circle correct answer.

1. Have you had experience with lawyers at hearings or trials? Yes No If answer is yes, could you state your opinions concerning this relationship?

2. Do you believe Montana doctors and lawyers have a good relationship? Yes No Im improvement needed, what do you advise on part of lawyers? On part of doctors?

3. Do you believe the average Montana lawyer appreciates the complexities of medicine as practiced today? Yes No Do you feel that if the legal profession understood this complexity that it would diminish the number of professional liability atcions filed? Yes No Comment.

4. Does it disturb you that lawyers are never or seldom sued? Yes No Why?

5. Do you think too many industrial accident claims end up in the attorney's office? Yes No Why?

Thank you for your thoughts! Feel free to use additional paper. I am sure you have been helpful. The results of the questionnaire will be made available to you upon request.

[21]Shakespeare, King Henry VI, Act 4, sc. 2.