Doctors, Lawyers, and the Courts by James R. Richardson

Rudolph J. Muelling Jr.
University of Kentucky

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DOCTORS, LAWYERS, AND THE COURTS. By James R. Richardson.

Professor Richardson has indeed done an admirable job in this compendium of law, technique, and appellate opinions as to how Medicine and the Law are irrevocably intertwined. This is emphasized in his statement from the Preface, "[T]here is a necessary overlapping of the legitimate functions of the two professions." The book has logically been divided into three parts:

I. Medicolegal Relationships
II. Methods and Elements of Medicine
   Proof: Damages
III. Socio-Mental Illness and Antisocial Behavior

The chapter on "Regulations of the Medical Profession; Duties and Liabilities" should be required reading for all physicians whose medical curriculum did not include Legal Medicine. Physicians and attorneys alike should read the ten propositions listed under unwarranted malpractice suits. Adherence to these will tend to curb unwarranted malpractice suits and will improve the relationship between the two professions. Even greater improvement of professional relationships will ensue if attorneys use the ten facts listed under attorney's obligation to the physician in litigation, and if physicians likewise use the ten facts listed under physician's obligation to the attorney. A smoother social administration of justice will follow and old areas of contention between attorneys and physicians could be wiped away.

In my own opinion, as the law becomes more specialized, i.e., into fields of specialized competence, we will see the development of specific areas where the physician can be helpful to the attorney:

1. Assessment of medical facts, i.e., whether the attorney has a case, based on medical fact.
2. Treating physician.
3. Medicolegal dissection of medical facts cases—areas where strong, areas where weak, what the opponents will emphasize, etc., even to the point of posing possible questions to be used in both direct and cross-examination. Thus the physician may sit at counsel's table and
feed questions during the trial. With medical experts on the stand, some attorneys believe that the mere presence of a physician at counsel’s table exerts a good effect.

4. The medical expert.

These functions will probably be filled by different physicians. Certainly the same physician could not function both as number three and number four.

A few areas of the text should be amplified to insure clarity and understanding, for example, the matter of anesthesiologists and anesthetists, discussed in § 1.2d. The former is an M.D. who has taken a residency in anesthesia and has taken the Boards in Anesthesia. The latter is usually a nurse who has taken training under the supervision of an anesthesiologist. Since their training and competence are different, their liabilities are different. Usually when an anesthesiologist is giving an anesthetic and some untoward reaction to the anesthetic occurs, the responsibility rests with this properly licensed medical specialist. However, when an anesthetist gives the anesthetic under someone’s direction, i.e., the surgeon performing the operation, the responsibility rests with the surgeon. To further complicate the situation, in many larger institutions, the anesthetist will be giving the anesthetic under the direction of the anesthesiologist, the latter supervising several anesthetists at once. Here the responsibility rests with the anesthesiologist.

Also, the matter of toxicologist performing an autopsy and then testifying on it (§16.2) would probably be allowed only in Alabama and Georgia where the law sets up a state toxicology system with Ph.D. toxicologists doing autopsies. In other jurisdictions, this would be considered the practice of medicine.

Finally, the proposed Medicolegal Statute in § 7.6 which became law in Tennessee in 1961 has several serious drawbacks and should not be considered a model statute. Some of these are:

1. The District Attorney General is given authority to order an autopsy when recommended by the County Coroner and the County Medical Examiner. Requiring the concurrence of three persons to obtain an autopsy seems unnecessarily cumbersome. The responsibility to order an autopsy should rest in the properly constituted medicolegal authority.

2. The District Attorney General is required to notify the family of the impending autopsy. Such notice is to be served and returned within 24 hours. The autopsy is to be performed on receipt of the
return, and if there has been no return within 24 hours, the autopsy shall be performed.

No one would disagree with the notification of the family and the fact that it is a Coroner's case and thus falls under the purview of society as a whole. The family has no jurisdiction in a Coroner's case and it seems unjustifiable to hold an autopsy in abeyance in a suspected homicide while someone chases relatives in Alaska or the West Coast. It seems senseless since the autopsy will be done whether or not the relatives are found.

3. Since it is based on a county system, it is impractical for a state with as many counties as Kentucky. For Kentucky, the District Medicolegal Officer working with the coroners of several counties or several Medicolegal Officers working with the coroner of one county (Jefferson for example) is considered a better system. Such a system was actually presented to the last General Assembly of the Commonwealth of Kentucky.

"And if this book aids physicians in better understanding the role they play in litigation, and is useful to attorneys in their role as advocates it will have accomplished the author's basic purposes." In my opinion, the author's basic purpose has been very ably accomplished.

Rudolph J. Muelling, Jr., M.D.\*  
\* Professor of Pathology and  
Director, Division of Legal Medicine  
and Toxicology  
University of Kentucky Medical Center


This book reports the results of a 1960 study conducted by Dr. Carlin, a sociologist with an L.L.B., and his associates into the ethical beliefs and conduct of the practicing lawyers of the New York City bar and the influences upon ethical and unethical behavior of these lawyers. Basically, the book is a statistical presentation built around 143 statistical "tables" presenting the results of various aspects of the study. Written in the jargon of the sociologist, it is difficult reading. The study, conducted under a Columbia Law School program, consisted of interviews with some 800 lawyers (out of approximately 17,000) in private practice in two of the New York City boroughs, Manhattan and Bronx.