

PACIFIC MEDICAL JOURNAL.

VOL. XXXII.

AUGUST, 1889.

No. 8.

Original Articles.

MALPRACTICE SUITS.

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One malpractice suit suggests another until, at times, the medical profession suffers from an epidemic of suits at law.

These suits are generally so groundless and frivolous in character as to show that they are instigated by a feeling of revenge for some fancied offense or to avoid paying for medical services. Such suits partake more of the character of libel or slander than they do of the avowed purpose of the suit. They aim at the injury of the doctor's reputation through the medium of the press, aided by the courts of law.

There is no class of persons so entirely dependent upon a popular reputation for professional skill and an exemplary life as the physician, hence he is the most frequent prey to slanders and vilification, prompted by the meanest instincts in human nature.

Not unfrequently we hear of worthy men in the profession, not very well established, perhaps, or too poor or feeble in some way to make a good fight, yield to the blackmailer and slanderer, and suffer severe punishment at his hands.

The people who make these public attacks upon the doctor's character in the form of a malpractice suit, are nearly always impecunious, with nothing to risk, neither reputation nor money, and entirely irresponsible, which circumstance gives the plaintiff an immunity from punishment, and is a strong reason for commencing suit.

Not long since a doctor was called by an anxious mother to

prescribe for her daughter, a young girl under her own roof, who manifested a growing deformity of the abdomen.

The doctor, as he was in duty bound to do, when he clearly and surely made his diagnosis, privately told the mother that her daughter was pregnant, whereupon the mother became greatly enraged, summarily dismissed the doctor, threatening him with a malpractice suit, as the first thing she could think of and the worst infliction she could impose to avenge her for the fancied wrong.

A few weeks, however, sufficed to verify the diagnosis, and the doctor escaped with only a severe but quiet vilification to the personal friends of the family.

This incident is mentioned here merely to show one of the many occasions where the practitioner of medicine is frequently exposed to a vindictive resentment for some fancied wrong, done by the physician in his ordinary routine labor of duty.

Another case recently occurred here where a physician in his office advised a woman to go to a hospital and have her ovaries removed for a disease which caused her suffering, and for which she applied for relief.

She went to the hospital and the operation was successfully performed, and now she threatens the doctor who advised her, and also the surgeon who operated, with a suit for malpractice.

Again, if the reasonable assurances of the physician are not fully realized in the complete cure of a disease, or the result of a surgical operation not quite satisfactory, not such as the operator had good reason to expect, and such disappointment may be, and often is from the neglect, or some fault of the patient himself, then to some people the imaginary wrong is sought to be righted, and redress obtained by putting their complaint before the public; by filing an exaggerated account of their grievance in a court, which is immediately seized upon, and highly overwrought and emblazoned to the public by the sensational newspapers.

Other cases there are by no means uncommon where the presentation of a bill for medical services has so angered the sordid nature of an ungrateful patient, that he finds some silly pretext of complaint against the doctor, by which he proposed to cancel the bill. He says he is not cured, perhaps, or even made worse by the doctor's treatment, which he has sought and continued to receive, and thought he was benefited by, until he was

called upon to pay; and finally he is apt to find some other doctor, *so-called*, so regardless or careless of the ethics of the profession as to assist him in his mercenary relation, and then he boldly refuses to pay the doctor's bill, and if pushed he commences a malpractice suit in bar of the claim.

Under existing laws and court rules, together with newspaper practices, the practitioners of medicine, as a class, suffer great injustice and annoyance from ignorant and dishonest people as above related. It is so in this city and throughout the State, that the majority of physicians who have attained prominence and a reputation for ability to pay, have been obliged to defend suits of this character.

Some united action ought to be taken by the medical profession to stop such slanderous attacks upon its members.

Our County Medical Society made an effort in the last Legislature to pass an amendment to the libel law now in our Code, giving the same protection to physicians, that editors and others have, i. e., requiring the complainant in malpractice suits, just as in libel and slander suits, to make an undertaking to pay the costs of suit in case it be dismissed, or is decided adversely.

The text of the bill introduced amended the present act to read as follows:

“ SECTION I. In an action for libel or slander, and in an action against a physician or surgeon to recover damages for the alleged malpractice of such physician or surgeon, the Clerk shall before issuing the summons therein, require a written undertaking on the part of the plaintiff in the sum of five hundred (\$500) dollars, with at least two competent and sufficient sureties, specifying their occupation and residences, to the effect that if the action be dismissed or the defendant recover judgment, that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, or on an appeal, not exceeding the sum specified in the undertaking. An action brought without filing the undertaking required shall be dismissed.”

This bill was favorably considered in the House, but was strenuously opposed in the Senate by some of the lawyers from the interior counties, on the ground that it discouraged litigation. The State Senators from San Francisco, I believe, all of them did themselves the honor to favor the bill. But for some

cause unknown to the writer, it failed to pass, and the lawyers must be happy that litigation is not discouraged.

It would seem just as reasonable that doctors should oppose sanitary laws on the ground that they diminish practice and discourage the progress of disease, but to the praise of the medical profession be it said, that sanitary science and sanitary laws protecting the people from disease and death, have ever had their origin in, and been promulgated and advocated by medical men, and I may further add that there never has been found in the medical profession, one man so mean and sinister as to oppose the passage of a sanitary law which was calculated to oppose the spread of disease.

Our State Medical Society, at its last session, expressed the opinion that medical men needed, and in justice ought to have, some protection against slanderous malpractice suits, and appointed a Committee to investigate the question and report a plan to be adopted by the Society at the next meeting.

That Committee, through its Chairman, Dr. C. N. Ellinwood, 715 Clay street, San Francisco, is in correspondence with medical men and societies in other States, with a purpose of getting the experience of older communities in this important matter, and the Committee would be glad to receive suggestions and information from any one that may contribute to the furtherance of the Society's aim.

Dr. Walter Lindley, of Los Angeles, and Dr. H. J. Crumpton, of Saucelito, are the other members of the Committee who would be glad to receive any information or suggestions on this subject.

Chicago has a Medico-Legal Society, a recent organization, the object of which is to "investigate, study and advance the science of medical jurisprudence, the punishment of unprofessional and criminal practices by members of the medical and legal professions, the prevention of blackmailing and the procuring of such legislation as may be necessary to secure the ends above enumerated. This Society has a large and respectable membership of doctors and lawyers, and holds frequent and interesting meetings. The practical results of its operations the writer is not yet informed of.

It has been recently suggested to me by a prominent member of the San Francisco County Medical Society, that the said Society should, by a Committee, investigate all malpractice suits

brought against any of its members, and that all suits of a frivolous, slanderous, and unjustifiable character should be defended by the Society.

It is thought that much good would result from such a united action on the part of the large membership of the Society, and an expression of views in relation to it will be asked for at some meeting of the Society, in the next month or two, and it is hoped that the matter may receive the attention it deserves, and that the members of the Society may deliberate and compare ideas, and come to the meeting prepared to express a matured opinion.