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## Original Articles

### PRESIDENT'S MESSAGE.
### LEGAL MEDICINE*


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Throughout the ages we find medicine and law closely related in the progress of civilization. Medical knowledge has ever been recognized as necessary to the intelligent enactment and enforcement of law. The Mosaic laws established a sanitary code for the preservation of health, with provisions as to diet, cleanliness, and isolation of the sick, which, in some respects, are not excelled at the present day.

The writings of Hippocrates, dating from the golden age of Pericles, elucidate a complete system of medicine, stripped of prevalent superstition. The art as now practiced, and the character of the physician as now understood, are said to date from this period. Here again medical knowledge was applied by legislation to questions of public health, and appears to have been sought in cases of questioned legitimacy.

Medicine shared in the intellectual decline of Greece, leaving in medical history almost a resulting blank; but it again asserted itself when Greece became a Roman province. Many Greek physicians then found their way to Rome, carrying with them their methods and culture, and spreading them among the Romans. Later, through Roman invasions, they found their way to France and England; so that in all medical centers Greek influence can be traced.

What the Hippocratic system was to medicine, the Code of Justinian was to Continental law, and, fortunately for the preservation of both, their basic principles were written, thus escaping the confusion of rules dependent on oral instruction or tradition. They were thus carried together into the later civilization. In the Code of Justinian are found many titles which show a distinct relation between medicine and law; and at that time, it is related, "the healing art stood in especial distinction, and men of free rank devoted themselves to it, and for pay; their depositions were of great weight in the estimation of wounds."

In France, in the Middle Ages, the medical as well as the legal profession became engulfed in the calling of the organized priesthood—the ecclesiastics. Medicine and law remained together with theology for a long time. Priest physicians as late as the fourteenth century were celibate. In 1598 a College of Physicians was organized at Rouen with a Canon at its head. Among its other duties and powers, the faculty of this college was said to possess sole competent authority in questions of legal medicine. In and blight of the Dark Ages, and was absorbed England, as in France, medicine felt the bigotry by the priesthood. More thought seems to have been given to the material which they illuminated than to the subject matter of which they wrote. For 1,200 years there was not only lack of progress, but marked deterioration and distinct loss.

Beginning about the twelfth century, and following the Crusades, the number of physicians who were not monks greatly increased, and physicians as well as lawyers began to pursue their profession without clerical or ecclesiastical connection. In the twelfth and thirteenth centuries the higher clergy were excluded from medicine in England, and, although the monks and lower clergy continued to practice, surgical operations were interdicted because the priest surgeons became affluent.

Following the Middle Ages the science of medicine felt to an unusual degree the intellectual impulse which all departments of learning received from the revival of Greek literature. The more important works of Hippocrates and Galen, many of them before unknown, were brought to light, and carried the profession out of the region of dogma, thus preparing the way for the scientific movements of our day.

The existence of certain necessary and logical relations between medicine and the administration of civil and criminal law has been recognized in all ages and among all nations. From this has arisen the science of medical jurisprudence, dealing with those professional subjects most likely to arise in such connections. In Germany, which has always led in medical jurisprudence and also holds to the Justinian Code, the true dawn of forensic medicine or medical jurisprudence as a distinct branch of scientific learning dates from the sixteenth century. In 1532 the Emperor Charles V enjoined the civil magistrate in all cases of doubt or difficulty to obtain the evidence of medical witnesses. In accordance with an old Roman custom in the cases of females, he called a jury of twelve matrons to protect their innate delicacy of feeling. There has been constant development of legal medicine since that time, so that its importance in the promotion of justice, and the scientific and accurate administration of the law, has never been so great as during these early years of this twentieth century.

The cases come under distinct classes, and must be clearly separated in our minds—cases arising out of criminal practice, affecting the social or personal civil rights of individuals, and that portion of civil practice which covers damage actions for injuries to the person.

In criminal practice, such as proceedings for divorce, annulment of marriage, alleged pregnancy, and breach of promise based on physical grounds, the power of the court to grant an ex-

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amination has long been exercised; and persons refusing to comply with the request have been deprived of their action of defense, or deprived of giving proof in reference thereto.

In civil practice, the subject before us, a worthy field for the application of these recognized powers of the court in the use of medical knowledge is found in the constantly increasing number of damage actions for injury to the person, chiefly against automobile owners, railways, and other large corporations. Fifty years ago there were few actions for damages for personal injuries, but now they clog the courts by their very number. The recent legislation in New York State, known as "Workmen's Compensation Law Act," Chapter 816, Laws 1913, which affects causes of action accruing from and after July 1, 1914, coming within its scope, will very largely reduce the number of these actions brought, but will probably increase the number of such claims presented for physical examination. The oft repeated claim that the nature of the injury is distorted and the extent magnified by unscrupulous plaintiffs and lawyers representing them, and, on the other hand, the alleged unfair methods of defendants, makes it most highly desirable that there be the greatest possible facility and accuracy in determining the nature and extent of the plaintiff's injuries.

According to the ancient common law, a trial was a species of combat rather than for the purpose of justice, and secrecy was its strong feature. This conception of a trial no longer exists, and in the language of Judge Finch: "A trial in a court of justice is meant to be a fair struggle after truth."

Under the earliest judicial decisions in New York, the defendant had no power to compel either an oral or physical examination of the plaintiff before trial, and thus the defendant might be held liable as the result of the plaintiff's secrecy and concealment of facts which would have constituted a defense. In time, however, the right of the defendant to reasonable information and advance knowledge of the extent of the plaintiff's injuries was gradually recognized and forced to an issue.

In 1877 the statute of New York now embraced under section 873 of the Code of Civil Procedure was amended so that the defendant could claim an oral examination of the plaintiff by an expert, as to the cause and nature of sustained injuries, before a judge or referee who could take a written deposition to be read at the trial of the case. This statute did not include a physical examination, but was a great step in advance.

In 1891 a test case in regard to the inherent power of the court to require a physical examination of the plaintiff, when not provided by statute, attracted national attention. In Indiana, Clara L. Botsford brought an action against the Union Pacific Railway Co. for damages resulting from negligence, claiming negligence in the construction of an upper berth in a sleeper in which she was a passenger, by reason of which the berth had fallen upon her head, bruising and wounding her, rupturing the membranes of the brain and spinal cord, and causing concussion of the same, and resulting in great suffering and pain to her in body and mind, and in permanent and increasing injuries. The railway company's answer was a general denial. Three days before the trial, the defendant moved the court for an order against the plaintiff requiring her to submit to a surgical examination in the presence of the plaintiff's surgeons and attorneys, if she so desired their presence, and in such a way as not to expose the person of the plaintiff in any indelicate manner. The defendant informed the court that without such an examination it would be without any witnesses as to her condition. The court refused to grant the order for a physical examination on the ground that it had no legal right or power to make and enforce such an order, to which the defendant duly excepted. After the trial, at which plaintiff and other witnesses testified in her behalf, and which resulted in a verdict and judgment of $10,000 for the plaintiff, the defendant sued out a writ of error to the Supreme Court of the United States, which was denied. The Supreme Court affirmed the judgment of the lower court for the plaintiff.

In an exhaustive opinion, the court, by Mr. Justice Gray, stated the right of every individual, at common law, to the possession and control of his own person, free from all restraint or interference of others, unless by a clear and unquestionable authority of law; and quoted Judge Cooley's remark that "the right to one's person may be said to be a right of complete immunity to be let alone." Mr. Justice Gray further said: "The inviolability of the person is as much invaded by compulsory stripping and exposure as by a blow. To compel anyone, and especially a woman, to lay bare the body or submit to the touch of a stranger without lawful authority, is an indignity, an assault, and a trespass." After citing and considering numerous cases, he states the opinion of the court that "the order moved for, subjecting the plaintiff's person to examination by a surgeon without her consent and in advance of the trial, was not according to the common law, to common usage, or to the statutes of the United States."

"The value of physical examination as a preventive of fraud is clear, and the question is how to overcome the obvious objection that many modest women having just claims might rather abandon them than submit to a physical examination at the hands of persons of the opposite sex appointed by the court. In this respect physical examination might sometimes hinder rather than promote justice." The reasons urged for the decision in this case constituted the chief argument against the recognized necessity for physical examination of plaintiffs in personal injury cases.

In 1891 the Court of Appeals of New York, in McQuigan v. The Delaware, L. & W. R. R. Co., held, in accordance with the previous decision of the United States Supreme Court, that the courts of New York State had no inherent power, in the absence of a statute conferring the right, to compel the plaintiff, on the application of the defendant, to submit to an examination of his person by surgeons appointed by the Court with a view to enable them to testify on the trial as to the existence or extent of the alleged injury.

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In 1893 the New York Legislature passed a statute giving the defendant in the State of New York the right to demand a physical examination of the plaintiff by a surgeon before trial.

"In every action to recover damages for personal injuries the court or judge, in granting an order for the examination of the plaintiff before trial, may, if the defendant apply therefor, direct that the plaintiff submit to a physical examination, by one or more physicians or surgeons, to be designated by the court or judge, and such examination shall be had and made under such restrictions and directions as to the court or judge shall seem proper."

This statute was found not to remove the objection to such an examination in the case of a female plaintiff. The first case, the famous case of Agnes Lyons v. Manhattan Railway Co., proved to be a test case. Although the order was given that the examination should be made by two prominent physicians, in the presence of a nurse or such other woman as the plaintiff should nominate, it was naturally contended that the examination was an outrage on personal privacy, and an assault in the eyes of the law, and was finally taken to the Court of Appeals. This court, while not ruling against the statute, reversed the case on a technicality in regard to the wording of the order, holding that the amendment of 1893 did not authorize an order directing a physical examination apart from or independent of an examination of plaintiff as a witness before trial. The opinion of the court distinctly warned the defendant of the danger attending their insistence upon the methods resorted to. It showed that although the law had been changed, public sentiment in regard to the compulsory examination of women had not changed, and might interfere with the successful operation of the statute through a stimulation of sympathy and prejudice in the jury box.

May 4, 1894, one year later, section 873 was again amended to read:

"And if the party to be examined shall be a female, she shall be entitled to have such an examination before physicians or surgeons of her own sex."

This seems to have met all objections, and the law has not been materially modified or amended since, although the first year after its passage, criticism was made by a physician as to the lack of expert qualifications in women physicians, and this appears to be the only criticism made. The Hon. Clark Bell, in answering, said: "I fail to see how any injustice can be wrought in an action by having women physicians or surgeons appointed in such actions when desired by women plaintiffs. The discretionary powers of the court would protect the defendant in case competent women surgeons could not be found by designating such surgeons as would be conceded competent. The ends of justice will best be subserved by adopting in every State proper means of enforcing a physical examination of the plaintiff in personal injury cases."

The members of the legal profession caused the passage of the statute in question, and they and the judges have in every way given to women physicians their staunch support; and every effort has been made to give to the law that full significance which is necessary for the promotion of truth and justice. A judge has said "that courts and juries have received women physicians with every indication of high respect and appreciation. But this has not been simply because of the fact that the witness and examiner was a woman. Courts and juries assume what the presence of a woman as a medical witness implies—an assertion on her part of competency to speak as an authority in regard to the medical facts of the case of which she has knowledge. She must therefore stand the test to which a medical witness qualified to speak is usually subjected. A witness cannot act a part in a court of justice. If a witness passes from the stand in confusion because of disclosed ignorance as to matters which should be known in order to practice safely and successfully, it is unfortunate for the witness, and it could have been avoided by careful preparation."

Mr. Justice Brewer has very clearly pointed out the justice, high purpose, and usefulness of the result reached by the New York statute. "The end of litigation is justice. Knowledge of the truth is essential thereto. The rule of law that has permitted a plaintiff, at his option and if he sees fit, to exhibit his injury to a jury in a damage case is well recognized and established. Equal justice should give the same rights to the party defendant. It should also be remembered that where the plaintiff is a woman, and the examination is liable to prove a delicate one, the physicians designated may be women; and as time goes on the difficulty in finding competent women physicians will grow less and less. On the whole, it may be safely said that the change is in the direction of justice, and will promote a discovery of truth in a large class of difficult cases.

"The physician is authorized not merely to make a physical inspection and manual and instrumental tests, but also to put such questions as are necessary to enable him to ascertain and report fully upon the nature and extent of the injuries complained of. Delicacy and modesty should be protected, and the examination made with the highest regard for the rights and feelings of the party, especially when the injured parts are in any way related to the generative organs; but the examination should be made with thoroughness and expertness."

About twenty States, including New York, permit physical examination. Among these twenty, three give the right by statute (New York, New Jersey, and Florida), but only New York provides by statute that women physicians shall examine women plaintiffs. About eleven States refuse on the grounds stated by the United States Supreme Court in Union Pacific Ry. v. Botsford, 141 U. S. 250. Other States have not passed on the question.

In the twenty years that the New York statute for physical examination of female plaintiffs by women physicians has existed, there have been numerous decisions by the courts construing the meaning of the statute. Such decisions have held, among other rulings, that the act is for the protection of women suitors, and that the plaintiff is entitled as of right to have inserted in the order the provision that a woman physician make the examination without making any spe-

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cial application to the court for it as a favor or privilege. It has also been held that bad faith can defeat the right when the purpose seems to be to inquire into previous history and physical condition; also, there is no inherent statutory power to compel examinations if an affidavit of illness on the day set for the examination by a physician is presented. It has also been held that the order can be set aside when the plaintiff has already submitted to an examination at the defendant's request, and no additional reason for another examination is shown in the papers submitted.

As to the physician's duty after making such an examination, it is held that the court cannot compel the examining physician to file a report of his or her examination, or reduce anything to writing, or make any report to the court. The plaintiff has no right to be informed of the results of such an examination, nor has he any right that a report be filed in court by the physician before trial, but merely that the physician will testify as other witnesses on the trial called by the other party.

It is also held that an examination of the plaintiff in actions for personal injuries is not an absolute right, but depends on the defendant's ignorance of the extent of the injuries complained of; and, where such examination is granted, the court must protect the plaintiff from objectionable examination. Therefore, when the nature of the proposed examination—as by the administration of anæsthetics or of atropine in the eye—might possibly endanger health, the court will not require him to take the hazard if he objects, and other directions and restrictions as to making the examination may be imposed. And in Lasher v. Bolton's Sons, 161 App. Div. 381 (N. Y.) the court held, two judges dissenting, that the authority for physical examination of a party to an action does not include authority to take photographs nor X-ray pictures. The plaintiff in that case was a woman, and the order directed her to submit to have an X-ray picture taken of her right foot only.

Some remarks by Draper on Legal Medicine in this connection are valuable. He says in effect that in cases of physical injury there should be an examination of the plaintiff before the trial for the purpose of determining the exact present physical condition with reference to the alleged injury, its progress, and any new conditions affecting the probable duration or permanency of the injury. The physician, within limits, can fix the time of the examination for her convenience. Before making the examination, the physician should study the pleadings in order to learn what injuries are alleged. The examination must be very complete and accurate. The expert should be familiar with every modern method of diagnosis that might throw light on the case, and be ready to apply them if necessary. Full notes should be taken, and the original notes carefully preserved for reference and to help recollection. One can not afford to be indifferent to special preparation when there is always time to look up authorities and refresh the memory. The importance of the evidence must be recognized and thoroughly considered. Flippancy of manner, exaggeration of language, and loss of temper are out of place on the witness stand. If one gives perfectly truthful, simple, intelligent testimony, avoiding as far as possible technicalities, cross-examination need not be feared. Testimony must be impartial and non-partisan, and questions should be answered clearly and concisely whether put by counsel, jury, or judge. Legal medicine is not law, but medicine; and, contrary to popular opinion, a knowledge of medicine is all that is required of the witness, as the testimony relates to medical or surgical conditions and their consequences. There are compensations in these cases outside the fees, and it is good practice for busy practitioners, even at personal self-sacrifice and pecuniary loss, to step aside from the ordinary routine of work and be responsible to others for the reason of their opinions. It is good post-graduate work, and it is said there is no more useful training than that which is required of the medical witness in his preparation for an important trial. "He will be surprised at the new and unexplored paths into which his researches will lead him; and the knowledge thus gained under a new sort of stimulus will add much to his outfit and to his ability to meet the ordinary emergencies of his professional life." This work is in its infancy not only for women, but men also, who approach it with the same disinclination as women on account of the demand on their time through the exacting nature of legal cases.

What constitutes an expert is often misunderstood. The following definition is by Lewis: "A person who is asked in law to express an opinion on some subject requiring peculiar fitness is called an expert, and the testimony he gives is called expert testimony. The degree of skill which an expert is required to possess is an uncertain quantity—the decision as to his competency in point of knowledge being a matter for the court—nor is it necessary that he should possess more than the average ability of those engaged in his particular art or profession, or to be actually engaged in the practice thereof. The fact that a person has been educated in or has practiced his art for such a reasonable period of time as would enable one of common intelligence to be familiar with such art, will render him competent as an expert witness. If a witness' testimony shows him to be an expert, his statement that he is not an expert does not deprive his testimony of the required quality of an expert. It is not necessary that a witness of this class should have made the particular disease involved in any inquiry a specialty in order to make his testimony admissible as expert; but if he has made such study, that may make his opinion of more value than that of one who has not thus qualified."

We should prepare ourselves to meet these requirements in our consulting rooms. Every patient who consults us should have the right to as expert an examination as can be given, leaving no avenue for correct diagnosis unexplored. Every case thoroughly studied makes each succeeding one less difficult.

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Recently an action was settled out of court because the physician sent by the defendant found a difference in the blood pressure recorded in the two arms, which led him to suspect a possible lesion of the brain—a danger which the expert attorney on the side of the defendant was unwilling to risk on trial. Nothing will help so much in these cases as the cultivation of the faculty of minute detailed observation, the training of the mind in analyzing and arranging data. Cases that come to us should not be merely treated clinically and symptoms relieved for the time being, but their history, general constitution—past, present, and future—should be thoroughly inventoried, and in a way classified, not only for the good of the patient, but for our own development.

In medico-legal work our duty is not performed by merely searching to find some facts which may aid in determining for the plaintiff or defendant. The physician should look for the truth—the actual facts as to the condition and the cause.

Again, when the physician abandons his position as a physician, and becomes merely an agent and assistant of the attorney for the plaintiff or defendant, judges and juries are quick to discover the situation, and the weight of the physician's testimony lessens accordingly.

Persons and corporations who are proceeded against for injuries sustained, seek through this physical examination to find out if the injury is real rather than only alleged, and to prevent exaggeration. Aiding the court to administer justice is a mission of the highest order, and a duty that should not be evaded.

Not long since, a physician was sent by a corporation to make a physical examination of a young woman. This case presented a typical picture of multiple sclerosis, with weakness in the limbs, exaggerated petella reflexes, intentional tremor, scanning speech, and nystagmus, which symptom-complex was said to have developed since her accident a few weeks previous. The physician reported the case to the claim agent of the corporation, explaining that he could easily note the group of symptoms himself if he went to see her—unsteady gait, shaking hands, peculiar speech, rolling eyeballs—but, she added, "possibly the condition was a coincidence." He replied, "The law does not recognize a coincidence;" and after seeing the patient, settled the case out of court.

The field for women physicians is extremely wide. Life insurance needs the co-operation of women physicians, and many of the best companies appoint them as examiners. The statutes of the State of New York, beside the one for physical examination, require the appointment of a woman physician in State hospitals and reformatories for women. Child welfare, race betterment, social hygiene, sociological needs of all kinds appeal to them, and make unceasing demand on time, talents, and resources. It is estimated that there are over three hundred thousand women teachers in the United States. When we speak of teachers, and what they accomplish, we speak of thirty thousand in the State of New York alone. Numerically, women physicians have their limitations. There are about eight thousand practicing. Less than this number are registered in the United States, and less than six hundred in New York State, including homeopaths, eclectics, and regulars, and many of these are not available as practitioners. Only six hundred women were members of the American Medical Association as compared with forty thousand men in 1907, when the Public Health Educational Committee was conceived, organized, and established on a working basis by Dr. Rosalie Slaughter Morton; and yet what it has accomplished in constructive preventive medicine cannot be estimated. Surely no group of individuals was ever so honored as to the amount and diversity of the work to which they are called than are women physicians.

My object in this paper has been to impress the fact that years were occupied in legislation and discussion by the legal profession before this statute was perfected by them and passed by the Legislature.

Its fulfilment depends upon our co-operation. We owe a duty to the people of the community who have demanded women physicians for the possible protection of the feelings of other women, and to the legal profession which has thus honored us.

May we conscientiously, wisely and skillfully meet this clear call to professional duty in Legal Medicine.

## VALUE OF PRESENT METHODS OF DIAGNOSIS.*

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I well remember hearing when a child the description given by my father as to the method of diagnosis used by one of his confrères who lived in a small town, and whose practice was largely among farmers in the surrounding country. When he was called in the night, as very often happened, he said he made his diagnosis as he tied his horse. If he heard the farmer groaning he knew he had pleurisy, but if he heard no sound he knew the patient had pneumonia; in either case he bled him and gave him calomel.

The physician of the olden time had to cultivate his powers of observation to the uttermost. He depended mostly upon what his eye, ear and touch would tell him, for the instruments of precision were clumsy and few. The aids to diagnosis have increased wonderfully in the last decade. The literature on the subject has become very voluminous. In order to understand the status of the subject today, one should not go back more than three or four years.

It seems strange to think there was ever a time when percussion and auscultation of the lungs to determine the condition were as new as the pnemococcus and thoracic examination with the

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