MEDIEVAL MEDICAL MALPRACTICE: THE DICTA AND THE DOCKETS*

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SOMETIMES jocularly, sometimes seriously, modern critics maintain that all medieval medical practice was malpractice. While amusing, such judgment ignores not only the sophistication of much medieval medical and surgical practice but also the attempts and the achievements of medieval medical legislators to establish professional standards and to enforce these in practice. Therefore it is especially fascinating to examine documents of medicolegal case histories adjudged in their own time as malpractice litigations; and then to compare this evidence from the legal dockets with the contemporary legal dicta whose purposes were to legislate against such malpractice.

Such investigation of actual case histories and of official legislative documents has at least three salutory effects. First it permits the modern critic to apprehend what the medieval medical mind considered malpractice. Among the numerous types of malpractice pleas are suits brought because of lack of success of promised cure, excessive payment demanded for services, aggravation of an original complaint because of medical folly, death due to medical negligence and, even, "iatrogenic sequelae," in which the effects of cure and curer caused new injury to the patient.

Beyond allowing an understanding of malpractice, the cases and the dicta demonstrate better than almost any other type of source material the actual state of medieval medical and surgical practice. For unlike any other documents, malpractice case histories permit disease and modalities of cure to be examined from three separate vantage points: those of the patient, the practitioner, and the professional peers who sit in judgment. Thus the positive–good practice–is appreciated through its negative–malpractice. What is more, these malpractice cases pro-

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vide—better than any theoretical treatise, no matter how comprehensive or how brilliant—apprehension of the medical world as it was, not as it might have been or ought to have been. Thus for such subjects as medical fees, medical women practitioners or, of particular significance, astrology and zodiacal computations in medical and surgical practice, the case histories of the legal dockets and the accompanying legal dicta demonstrate the manner in which all of these functioned in actual practice, not merely in learned theory.

The third reason for this study is probably the most important. It intimates the startling relation between medieval medical authority and civil authority. By means of the medical and surgical guilds, the medieval practitioners achieved reformation of their profession from within and implementation of their regulations from without by powerful municipal and sometimes national cooperation. The malpractice case histories suggest the complex and effective procedures for complaints by a patient or his surrogate, by a fellow practitioner, or by a professional organization; procedures involving malpractice insurance; and procedures for adjudication of complaints. Almost all of these processes have shockingly complete internal checks and balances designed to secure equity for the patient, the practitioner, the profession and, not least, the citizens of the city.

To illustrate these three concerns with malpractice, actual practice, and medicolegal relations I have selected seven legal cases from the surviving documents of medieval London, ranging over the 150-year period from the mid-14th century through the late 15th. Arranged chronologically, they allow the tracing of certain developments and evolutions of ideas. With these seven major cases I have paired medicolegal legislative documents which indicate the theoretical tenets the cases demonstrate in practice. In addition to the seven major cases and their associated dicta, there are another seven minor cases which add significant details concerning malpractice outside as well as inside the City of London. To facilitate comprehension of these remarkable manuscript sources—written originally in Latin, Norman French, and Medieval English, and culled from London Guildhall archives, law-court registers, and various Public Record Office memoranda—I have designed two charts (Tables I and II) of these case histories detailing their sources, dates, trials, verdicts, punishments, significances, and related official documents. For the acknowledged habits of diagnosis,

TABLE I. SEVEN MAJOR MALPRACTICE CASES: THE DOCKETS AND THE DICTA

Case	*Date*	*Source*	*Plaintiff vs. defendant*	*Accusation*	*Verdict*	*Significance*	*Dicta*
1	1354	Guildhall *Letter Book G*	Thomas de Shene vs. John le Spicer	"Maiming" and neglect of jaw wound	Guilty	If had been expert and if had called counsel, then curable; since not, thus culpable	1369
2	1377	*Plea and Memoranda Rolls*	Walter del Hull vs. Richard Cheyndut	"Endangering" leg	Guilty	3 expert witnesses Punishment via fine and prison	1376
3	1382	Guildhall *Letter Book H*	Roger atte Hache and Mayor and Commonalty vs. Roger Clerk	Deceit and falsehood in treating woman	Guilty	Fee with downpayment Charm against fevers Public punishment	1376
4	1408	*Plea and Memoranda Rolls*	John Clotes vs. John Luter	Failure to cure and excessive fees	Guilty	"Goods" fee "Lepre" Direct adjudication by mayor	1390
5	1424	*Plea and. Memoranda Rolls*	William Forest vs. Simon Rolf, John Dalton and John Harwe	"Iatrogenic sequelae," maimed hand	Not guilty	Committee of Eight witnesses, chaired by Doctor Gilbert Kymer Astrological considerations	1410 1415 1423
6	1443	Mayor's Court files	1) George Baylle 2) John Roper vs. Matthew Rellesford	Worsening of: 1) "le stone" 2) "anoncomo" foot	Mainprised and case transferred	Fees with downpayments Suits for damages	1435
7	1464	*PRO Exchequer Records*	George Humphreyson vs. John Isyng	[neffective treatment and excessive fee	Unknown	Countersuit	1461

TABLE II. SEVEN MINOR CASES

Case	*Date*	*Locale*	*Defendant*
A	1350	Devon	Pernell
B	1375	Chester	Thomas de Clotton
C	1385	Chester	John Leche
D	1387	London	Thomas Butolf
E	1417	London	John Severall Love
F	1433	York	Mathew Rutherford
G	1493	Unknown	Peter Blank

prognosis, and cure the seven major and seven minor cases offer splendid testimony.

CASE I

In 1354, assembled before the Mayor of London, the aldermen, and sheriffs, four surgeons swore their testimony against practitioner John le Spicer, who had treated Thomas de Shene for "an enormous and horrible hurt" of the left side of his jaw.[1] The surgeons were required to certify whether the wound had been curable at the time treatment had begun. Their answer: if John le Spicer had been expert, and if he had called in counsel and assistance to aid him, then the jaw would have been curable. Since he did neither, his lack of skill rendered the injury incurable.

This document is noteworthy in several ways. First, the highest civil authorities, the mayor and his council, judge the accusation of malpractice; second, their decision is based upon the testimony of four expert practitioners who had examined the patient and inquired into method of treatment, which they had adjudged deficient. The sworn testimony presupposes the third and fourth significant aspects of this case: that there were established criteria for treatment of certain wounds, and that there was available machinery for consultation by experts to advise and assist the individual practitioner in difficult cases. Finally, since the patient's wound had been curable in the past but would be incurable in the future, the treating practitioner was criminally culpable. Implicit is the practitioner's responsibility to cure what he has undertaken to cure and his legal accountability if unsuccessful.

The first case suggests an established set of standards, method of surveillance, and definition of responsibility expected not only of the practitioner but of his profession. Since the whole case is expressed in unremarkable Latin prose free of any references to the unusual nature of this court proceeding it would seem to represent an expected type and process of adjudication. No doubt it was. For in the very same Guildhall manuscript, although dated 1369, 15 years after the trial of Case I, is the legal document that describes the oath and investiture of the three master surgeons of the City of London, admitted in full ceremonial regalia, in full husting, by the mayor and aldermen.[2] Not only do the surgeons swear that they will faithfully follow their calling and take reasonable payment for their services, but that they would present to the mayor and aldermen the defaults of others who undertake cures; that they would be ready to attend the maimed and wounded at all times; that they would give truthful information to the officers of the city concerning such maimed, wounded, and others if they be in peril of death.

This means, of course, that it is the *duty* of the master surgeons to recognize malpractitioners and report them; to examine "questionable" cases, and report the results to civil authority. It implies, though it does not state, that patients who have desperate wounds or are in danger of death must be shown to the masters. Later documents, in fact, state that responsibility precisely.[3] Case I intimates the same. And the nature of the recording of this master surgeons' oath suggests that such might have been included; for not the least interesting word in this document is the persistent repetition of "etcetera," indicating that the procedure of investiture and components of the commitment were written down incompletely because they were familiar and formulaic.

Case II

But we need not speculate when still other documents most cooperatively reveal what some omit. Case II (A. D. 1377) is brought by Walter, son of John del Hull, pinner (a trapper of stray animals), against Richard Cheyndut,[4] practitioner, who had committed himself to cure Walter's "malady" of his left leg.[5] Three surgeons who at the mayor's order had examined the leg testified that because of the practitioner's lack of care and lack of knowledge the patient was in danger of losing his limb. The mayor asserted that only great experience, great

care, and great expense might save the leg from permanent injury. Surgeon Richard Cheyndut thus was fined 50 shillings in damages by the jury and was jailed.

In this case not only is the expert testimony required and received by the mayor, and not only does the inquiry committee find the defendant surgeon guilty, but here is documentation of medieval punishment for malpractice. Damages must be paid to the aggrieved party, and the guilty party is imprisoned.

One year before Case II was heard, the mayor and aldermen granted an ordinance requested by the barber-surgeons.[6] This Norman French document is nearly one half a complaint against non-London surgeons and their poor practices and one half a petition for control against their abuses. It maintains that daily there come to London from "uppelande," that is, the north country or "the sticks," men who profess surgery and the curing of illness but who were never instructed in the craft. This is to the damage and deceit of the people as well as to the scandal of the good practitioners of the city. Thus the honorable Lordships are enjoined to prevent any stranger coming to London from "uppelande" from practicing until he is examined by London practitioners. To accomplish this two wardens are to be appointed, chosen by the craft, presented to the mayor, and sworn in by him, to regulate its practice. These masters are to inspect instruments, report "rebellious" practitioners to civil authority, and cause any in default of the ordinance to pay to the Chamber a fine of 40 pence. No franchises for practitioners are to be granted until attested before the mayor by examination as good and able. No foreigner shall be allowed to practice within the city or its suburbs. And this ordinance shall be enrolled in the Chamber of the Guildhall of London—where indeed it still is—"for all time to last."

In a Latin addendum following this document, the ordinance is granted as recorded, and Laurence de Westone and John de Grantone are chosen masters.[7] As in the Master Surgeon's Oath of 1369, this ordinance affirms the mutually advantageous relation between medical-surgical craft authority and municipal authority. For the sake of the citizens and the city, the London government is requested to assert, to dignify, and to enforce the code of professional behavior promulgated by the practitioners for the sake of patients and themselves. While the gist of this document is as much against "uppelanders" and foreigners

Fig. 1. Physician, rear left, at death bed of patient, in the 15th century illuminated manuscript, *Hours of Catherine of Cleves*. Reproduced by courtesy of the Morgan Library, New York.

intruding upon London practice as it is against malpractice in general, it is significant for its insistence upon examination and accreditation, with civil licensure, before admission to practice. And it specifically enumerates a fine for malpractice. Interestingly enough, this forfeiture is to be paid to the civil Chamber (in later years, as other documents testify,[8] the Guild of Surgeons will take its portion of all receipts from its members' perfidies). Internally appointed surveillance externally enforced by civil court is here augmented by monetary punishment.

Case III

The third case concerns not only false medical practice but a false practitioner. Roger Clerk of Wandelesworth is required to answer a complaint made before the mayor and by the mayor as well as by Roger atte Hache asserting deceit and falsehood.[9] Since no physician or surgeon "should intermeddle with medicines or cures" in London unless experienced and licensed therein, Roger Clerk, who was neither, and was also unlettered, came under false pretense to the house of Roger atte Hache to cure his wife Johanna, who was lying ill "with certain bodily infirmities" and fever.

After being paid 12 pence as downpayment on the larger sum to be paid upon healing, Roger Clerk placed an old piece of scratched parchment rolled up in a piece of gold cloth around the neck of Johanna, asserting that it would help her fevers and ailments. It did not. When confronted in court with the parchment still rolled up in its cloth, the false physician insisted that a charm against fevers was written thereon: "*Anima Christi, sanctifica me; corpus Christi, salve me; in isanguis Christi, nebria me; cum bonus Christus tu, lave me.*" When the parchment was examined by the court not one of these words was found. Since upon further questioning Roger Clerk was found to be illiterate, an infidel, and totally ignorant of the arts of medicine and surgery, and since it was necessary to protect the people from being deceived and aggrieved by such imposters, it was decided that Roger Clerk be led through the middle of the City, with trumpets and pipes playing (he being pulled by a horse), the said parchment and a whetstone for his lies being hung around his neck, and a urine flask being hung before him, and another urinal on his back.

The gullibility of those who would be deceived is splendidly depicted here, as in the amusing unity between Christian liturgy and

Fig. 2. Marginalia figure of physician and skeleton (Death?) in illuminated manuscript M 359. Reproduced by courtesy of the Morgan Library, New York.

Fig. 3. A Rabbit Physician, from illuminated manuscript *Book of Hours,* Franco-Flemish, 15th century. Reproduced by courtesy of the Morgan Library, New York.

pagan amulet in the episode of the neck charm.[10-14] More important for the study of malpractice, however, is the impetus for suit. Not only is the false physician accused by the husband of the patient but also by the mayor and the commonalty (community) of London. The accusation thus is double: Roger Clerk violated not only one man's trust

but London's civic code forbidding practice of the unlearned and the unlicensed. Very likely, that code was the ordinance of 1376 or its equivalent. Fascinating also is the reference to payment of fee, agreed to in advance: down-payment upon beginning treatment, the remainder upon healing. And the graphically depicted ignominious public punishment alludes to one of the major diagnostic tools of medieval medicine as well as the veritable insignia of the medieval physician, the urine flask for urinalysis[15-17] (Figures 1-3).

Case IV

Failure to cure and the exaction of excessive fees are the accusations leveled against John Luter, leche (physician), by John Clotes, who had come to him for cure of a disease of the face.[18] The document for this case asserts that the patient delivered to the physician: 15 serpentyns (semiprecious green jewels) of the value of 9 marks, a gold tablet of the value of 60 shillings, and a sword of the value of 6 shillings, 8 pence. These the defendant was to keep if he cured the patient of a disease called "lepre"; not only had the physician not cured the disease but he kept the fee, thereby causing the patient a loss of 20 pounds. The physician's response was that the patient had maintained he had the disease called "salsefleume," not "lepre"; on that basis he had undertaken the cure even though he knew the patient to be "leprous" and so told him. At the time of the transfer of goods-for-fee the physician promised cure only if the patient were not leprous. To this the mayor, Drew Barentyne, answered that the physician had taken the patient's valuables "fraudulently, deceptively, and injuriously." Afterward the defendant maintained that though he had not cured the plaintiff of "leprosy" he had taught him to make balsam and other medicaments and thus ought to keep his fee.

Numerous aspects of this case repay examination: the definition of disease, its diagnosis, the fee and the associated promises for cure, and the adjudication itself. Implicit in this case is the medieval recognition that certain diseases by definition were incurable. Thus "lepre" should not have been treated because it *could* not have been treated. "Salsefleume," however, by definition was curable and fairly could justify the promise of cure and payment for it. Definition of the patient's "disease of the face" proves to be the substance of the plea. Medieval medical and medieval artistic works present "lepre" and "salsefleume" as fa-

miliar attributes of description; Chaucer's repulsive, pustulous, lascivious "Summoner"[19] is a vivid reminder.

As interesting as definition is the method of diagnosis in this case. The practitioner excused his perfidy by accepting the patient's definition of his own disease! The fee composed of precious goods given in advance and kept upon success of treatment represents still another type and method of medical payment delineated by malpractice records. The last unusual quality in Case IV is its hearing: apparently by the mayor directly, with only his recorder present, with no mention either of expert medical witness or jury.

This last is especially surprising because of the legal milieu in which the case was tried. During this 150-year period the legal dicta concerning malpractice give ever-increasing responsibility and power to the practitioners' guilds and to their masters. This is accompanied by ever-closer interrelations between medical and civil authority. The Master Surgeon's Oath of 1390, for example, includes the commitment to serve the calling faithfully, take reasonable recompense, and examine patients for city authority when necessary; it embraces also the various other pledges familiar from earlier oaths.[20, 21] The use of "etcetera" again suggests the routine, indeed, formulaic nature of most of this consecration. However, certain additions to the expected points include increased surveillance by the masters over practice and increased reportage of medical circumstance to the officers of the city. The new master surgeons promise "to faithfully scrutinize" other men of their calling and present their defaults to the mayor and aldermen; likewise they will scrutinize all *women* of their calling and similarly report. This marks one of the first appearances of female practitioners in the official English dicta, although the history of women healers is venerable.[22-26] The masters also swear to give faithful information to the city administration as to those wounded or hurt, as well as to those in peril of death. Such reportage of prospectively desperate cases, which means that the practitioner had to alert the masters and they, in turn, the city officials, is especially significant. Probably it is an idea far older than its statement in 1390 (as Case I and its 1369 dictum suggest). It may well represent the origin of medieval malpractice insurance.

To illustrate this it is useful to interrupt the recital of the seven major cases in order to refer to one minor item, which actually is not a malpractice case but a 1417 writ of "recognizance" of great importance

in the history of malpractice.[27] Case Letter E indicates that John Severall Love owes the chamberlain of London 20 pounds sterling as "recognizance." If he does not warn the wardens of surgery of the risk of maiming or of death of a patient under his care within four days of accepting the patient, the recognizance is to hold good; he will lose his 20 pounds. If he does alert them in time, he loses nothing. Provided that it is lawfully proved that John Severall Love has performed against the condition aforesaid, one half of the pledge will be forfeit to the city, one half to the faculty or craft of surgeons.

Thus, before attempting cure of a "high-risk" patient, the surgeon not only must report his case to the wardens of surgery but must surrender a monetary pledge to civil authority to insure his compliance with the medical-civil code. If recalcitrant, the practitioner pays, equally, the two institutions whose dicta he had violated. The timing of the pledge allows for a system for protecting the patient and a mechanism for guarding the practitioner. This recognizance is not a fine for malpractice after it is committed but advance payment required of the practitioner in case his unaided care is deemed malpractice. This assures the critically ill patient of expert consultation in the master-surgeon's examination, and it insures the practitioner against accusation that cure could have been effected if counsel had been called. Further, the practitioner is protected by the provision that he must be "lawfully proved" to have acted against the code if his money is to be forfeit. While not protecting the practitioner against all lawsuits brought by patients, it does protect him against some, such as the plea which caused Case I; and while not exonerating him in advance from all civil action which might be brought against him, such as that in Case III, this "recognizance" protects him against most. In effect the early 15th century London doctor had his prepaid malpractice insurance premium covering individual high-risk patients, administered jointly by craft and city, enforced by civic authority, and shared, if he defaulted, equally by profession and municipality.

This demonstration of proto-insurance procedure in practice in 1417 is partly corroborated in theory by two documents of 1415[28] and 1416.[29] A long Latin disquisition prefaces the familiar oath of allegiance sworn by the master surgeons in 1415 with a complaint against the inexperienced practitioners of surgery who undertake care of the sick and maimed, who thus obtain goods fraudulently, who are

a menace to the sick, and who are a scandal to qualified practitioners. The manner of selection of masters as well as responsibilities of masters to scrutininze, correct, and manage the craft is followed by the selection of two sound, sagacious surgeons as masters: Richard Wellys[30] and Simon Rolf.[31] Directly following their oath of investiture, on May 3, however, the document stops. It is recommenced by another scribal hand under date of July 4, 1416, one year, one month, and one day after the master surgeons' oath, with this unhappy but not unexpected assertion: "Upon truthful information of certain trustworthy and discreet" practitioners of surgery it was understood that despite the ordinances against malpractice, inexperienced, indiscreet practitioners still were treating those in peril of maiming or death without alerting and consulting with the master surgeons. Accordingly the mayor and aldermen agreed that since "in these times" many more dread the loss of money than are amenable to the dictates of honesty or of conscience, a penalty paid to the Chamber of London "in form underwritten," would be forfeit by the medical miscreant so often as and when he violated the ordinance. Six shillings, 8 pence would be shared, 5 shillings to the Chamber, 20 pence to the craft.

Such monetary sanction appears in documents earlier and later for other offenses. Whether this was a "fine" paid upon judgment of guilt or whether this was a "recognizance" paid in advance "in the form underwritten" the records do not tell. That reportage by practitioners to guildmasters was enforced by pecuniary penalties is definite. John Severall Love's debt to the city chamberlain may represent the next step in enforcement after the 1416 dictum: payment in advance of guilt in order to prevent guilt. Medical malpractice insurance thus may have had its beginnings in medieval prophylaxis against malpractice.

Case V

Our return to the seven major malpractice cases introduces Case V, one of the most fascinating documents in English malpractice history.[32] No doubt it was considered significant in its own time as well, for it was arbitrated before the mayor and aldermen by a learned committee of eight expert witnesses, including the master physicians and the master surgeons, under the chairmanship of Dr. Gilbert Kymer,[33] churchman, rector of medicine, and chancellor of Oxford University. The plea is "iatrogenic sequelae," a new injury caused by

surgical intervention in an original condition. The defendants are surgeons: John Harwe, John Dalton, and Simon Rolf; this last just nine years earlier had been the surveying master surgeon of London. The plaintiff is William Forest who, suffering an injury to the muscles of the thumb of the right hand and bleeding frequently and profusely, was treated by the three major surgeons. They, to prevent exanguination and death, and with the patient's consent, cauterized the wound. The patient then sued his surgeons for maiming his hand. Not the least remarkable aspect of this case is its depiction of the role of astrology in medieval practice.[34-39] Here is the award of the committee, their words translated from Latin:

> William Forest, plaintiff, when the moon was dark and in a bloody sign, namely under the very malevolent constellation Aquarius, was seriously hurt in the said muscles on the last day of last January and he lost blood enormously even to the ninth day of February last past, the moon remaining in the Sign Gemini. That the said Simon Rolf himself staunched the blood successfully at the beginning and that afterwards the said John Harwe helped by John Dalton . . . artificially arrested it when the bleeding had recurred six times with great vehemence from the aforesaid wound even to (syncope) and as if William Forest would die. And that on the seventh occasion William was thought to be in danger of death owing to the excessive loss and quickly deciding that he would suffer mutilation of his hand rather than death, the said John Harwe with the express consent of the said William, who was thus bleeding, when other remedies had failed, stopped the bleeding with the cautery, as beseemeth, and saved his life and freed him from the bonds of death. Wherefore we praise, we award and we decide that the aforesaid John Harwe, John Dalton and Simon Rolf individually by themselves and by any of them, especially John Harwe, acted well and surgically in what they did in the aforesaid treatment and that none of them made any mistake in any way in this matter. Wherefore we absolve them and each of them and especially John Harwe, from being impleaded by the same William Forest in the aforesaid matter by imposing perpetual silence on the same William in this affair. Moreover we find that they themselves are so free from the fault attributed to them and

Fig. 4. Astrological Man, with zodiacal insignia which "control" physiological features, and with constellation signs and numerals which were thought to predict and aid diagnosis, prognosis, and treatment. From the *Très Riches Heures* of John, Duke of Berry, 15th century, Chantilly.

to any of them and especially to John Harwe, defamed maliciously and undeservedly, that as far as in us lies we restore to them unsullied their good name so far as their merit demands and deserves in this affair.

We further declare that any defect of the aforesaid hand, or mutilation or the ugly scar, so far as our industry avails to decide it, is due to the aforesaid constellation or to some peculiar defect or injury of the said William owing to the original wound.[40]

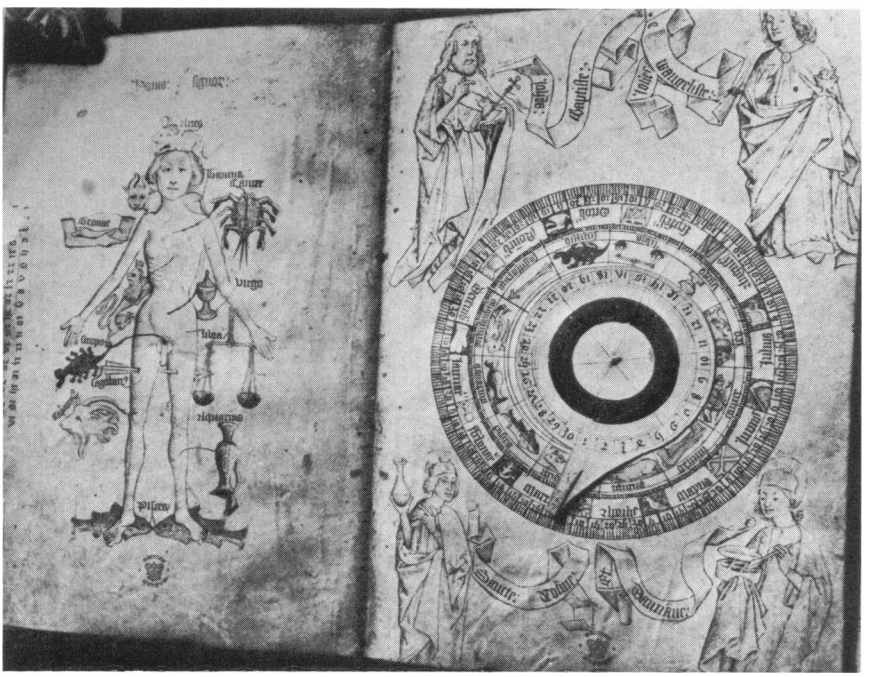

Fig. 5. Manuscript leaves from *The Guild Book of Barbers and Surgeons of York.* Astrological Man, on left. On right, Volvella, concentric spinning disks with zodiac symbols, for computing appropriate times for surgery and administration of medicines, 15th century. Courtesy of the British Museum.

Marvelous is the tripartite justification for any disfigurement or mutilation: the inauspicious constellations, the inherent defect of the patient, and the nature of the original wound. While medieval empirical judgment required emphasis on the patient's demeanor and on the type of his injury, the astrological computations explained the inexplicable: the inefficacy of otherwise expert care. Just how the medieval practitioner achieved his unity between often sophisticated scientific knowledge and celestial zodiacal computations is illustrated in figures 4 through 6.

In addition to astrological fascination, Case V suggests that the contemporary legal documents might reveal information on the importance and complexity of its examining committee, led by the estimable Dr. Gilbert Kymer. Indeed, it appears that William Forest's maimed

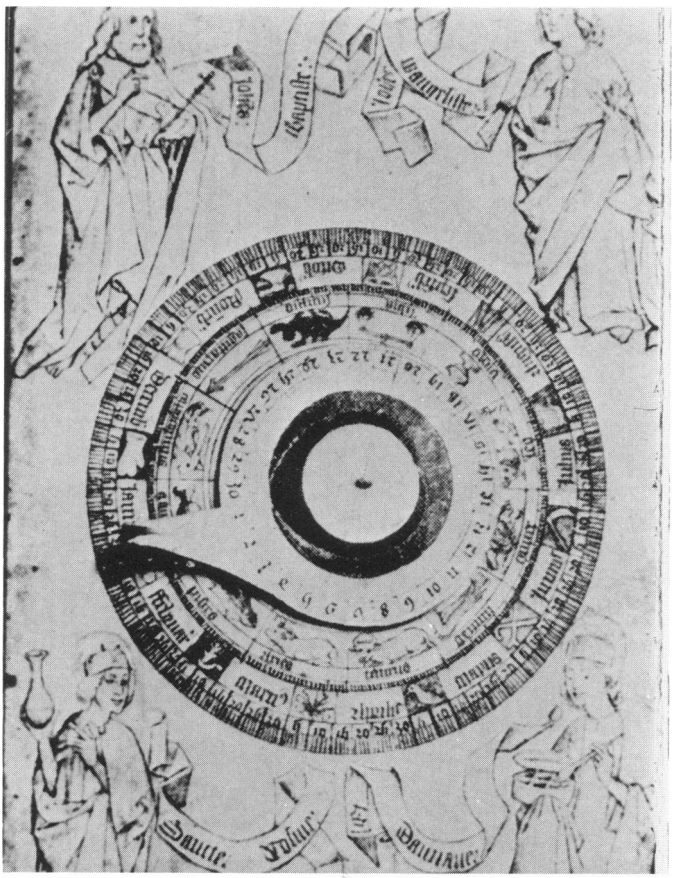

Fig. 6. Volvella, close-up of figure in Figure 5. Note Saints John the Baptist and John the Evangelist in upper margin and Saints Damian and Cosmos, the patron saints of medicine and surgery, in lower margin. Damian carries an ointment (or feces) box while Cosmos bears a urine flask.

hand marked one of the first legal tests of the Conjoint Faculty of Physicians and Surgeons. For in 1423 a petition proudly worded in English, the first of these malpractice documents written in the vernacular rather than in Latin or French, was presented to the mayor and aldermen and quickly granted by them.[41] To prevent malpractice in medicine and surgery a joint college of the two crafts was to be ordained, with medical practice under the aegis of two surveyors of medicine, and surgical practice under two masters—the two houses united

under a single rector of medicines. The document itself is a treasure of theoretical and practical information, including methods of examination of professional candidates for licensure; reportage to authority of dangerous cases; provisions for conviction by peers and civil punishment of medical malefactors; procedures for medical care of the indigent; inspection and control of apothecaries; surveillance over medical and surgical practice by peers as well as surveyors; and a system of fines and forfeits shared equally by the municipal chamber and the professional faculty.

Yet more important than these provisions is the list of petitioners who introduced them and later, upon appointment, implemented them. These are: Doctor Gilbert Kymer, rector of the conjoint college, the two surveyors of medicine, and the two masters of surgery. All gave learned testimony in Case V. Or, better, all testified but one, Master Surgeon John Harwe,[42] for he was one of the accused. It appears that William Forest with the maimed hand had the audacity to sue two of the most important surgeons in England: Simon Rolf, master in 1415, and John Harwe, master in 1423, as well as surgeon leader of the new joint faculty. Possibly John Harwe was called to the case upon consultation required by the law of reportage of cases in danger. Nevertheless, the magnitude of his official surgical appointment explains the frequent references in the documents of the case to exonerate from blame "especially John Harwe." Then as now, professional distinction granted little immunity and less peace.

Case VI

The London Mayor's Court Files for 1443 document Case VI, which really is two cases here joined because of their common qualities.[43] Both patients complain that their original conditions deteriorated under medical ministration; both claim not simply return of fees but damages for suffering wrought; both agreed in advance to pay the surgeon a specific fee, and one made down payment of half the fee before treatment; both accused the practitioner of ignorant mistreatment; and, indeed, both accused the same defendant, Matthew Rellesford.[44] Whether this surgeon was proved guilty of worsening George Baylle's "stone" or John Roper's "anoncomo" of his left foot, the records do not tell. Noteworthy, however, is this glimpse of a practitioner who by professional ineptitude, litigious personality, or selec-

tion of contentious patients twice drew lawsuits in the space of one year.

For Case VI the paired dictum is of greater interest than the record of the docket. In a small vellum volume dated 1435 a long treatise of laws for the regulation of the craft of surgery appears in detail so startlingly complete that not only is professional practice controlled but private behavior as well.[45] Minuscule considerations of corporate meetings, guild dinners, personal quarrels, charitable acts, deportment during masters' meetings—all of these are detailed and fines are assigned to all prospective offenses. The document is an exemplification of responsible self-government. For the honor of the craft, for its probity, and for its perpetuity, the ordinance regulates all aspects of academic, practical, and ceremonial function, while clearly appreciating the humanity and the foibles of its individual members. Here is an example of the human and professional checks and balances inherent in each provision.

As in many of the past dicta, this proposition, advanced in A.D. 1435, requires each practitioner with a case likely to result in death or mutilation to report it to the masters and receive consultation. In the ordinance of 1416 a fine was added for enforcement and, in the document of Doctor John Severall Love (1417), a prepaid "recognizance" was required to assure compliance. The document of 1435 goes even further to ensure equity. All must show such dangerous cases to the masters or suffer a penalty of 13 shillings, 4 pence. However, if the *master* did not appear when called, he was to be fined 6 shillings, 8 pence. Or if the master, upon consultation, attempted to take the patient out of the private practitioner's hands to treat him himself, he was bound to pay restitution of the expected fee to the aggrieved surgeon as well as to pay a fine to the craft for the filching of patients.

This document is written by those who know men as well as instruments. In their provisions concerning the uses and abuses of power, in their delineation of punishments for all levels of professional and personal corruption, they demonstrate a concern as humane as it is practical. To account for the vagaries of human achievement they establish for the craft a probation period before tenure and a statute of limitations for achieving professional accreditation. To account for the unpredictability of human failure, they allot a portion of the craft's dues and fines for the support of their fellow surgeons who had fallen

into poverty. To account for the unexpected, they predict, prescribe, and proscribe not only major professional actions but those trivia of personality that contribute to the image of the practitioner held by the patient, by the fellows of his calling, and by the municipality. Few compilations of rules legislate so pervasively and so justly.

Case VII

The seventh and last of the major cases is amusing for the method by which an accused practitioner institutes countersuit against his patient. While the document leaves unsaid as much as said, it appears that Gilbert Humphreyson, who had suffered an injury to his hand, brought complaint against his surgeon for ineffective treatment and excessive fees.[46] John Isyng, the practitioner, retaliated by accusing the patient before the local authorities of stealing a horse from Anthony Woodville, the second Earl Rivers. The patient, maintaining that this was vindictive nastiness, begs the earl to intercede in the case and dismiss the charge. We do not know whether the noble lord came to the rescue nor whether the surgeon was deemed guilty of malpractice, nor do we know what happened to the allegedly stolen horse. But the significance of this case to the history of malpractice is its depiction of protection of the practitioner by means of legal counterproceedings.

Paired with Case VII is a legislative document of 1461 which essentially and specifically reconfirms privileges and responsibilities granted in earlier decrees.[47] Rather than pursue its repetitions of familiar pledges, it will be pleasant to examine briefly the seven minor cases, in order to determine what qualities they add to knowledge of malpractice in medieval England (Table II).

Most of these seven cases, which I have labeled Cases A through G, occurred outside London. Not too surprisingly, these records often are less detailed than those which had the ready perquisites—the official scribes and their parchments—to memorialize the minute acts of a proud city. For London long has had a tradition of civic pride, and its pride in turn is its venerable civic tradition. Yet these minor cases are often instructive when they demonstrate similarity to dockets of London, thereby implying that what was considered malpractice in the metropolis was similarly malpractice in the towns. These minor cases are even more useful when they differ from the major cases, especially with respect to punishment for malpractice and with respect to royal inter-

vention in the implementation of the regulations. The minor cases are most interesting when they introduce notions undefined by the seven major reports.

An example of this last proposition is Case A, in which Pernell, a woman physician from Devon, is accused of causing the death of a miller of Sidmouth because of her ignorance and poor practices.[48] Apparently judged guilty, she was punished by outlawry, physical outcasting. However she received royal pardon and was thus freed from stigma. Here is a significant reminder that not only did women practice medicine in medieval England, but like their male counterparts, they also malpracticed—or were so accused. The punishment of expulsion from town is far harsher than most thus far discussed in the major cases occurring in London, and the cancellation of punishment by royal intercession is unexpected. This same circumstance, of the king intervening to reverse the punishment of malpractice, appears again in Case C, where the locale is Chester.[49] There John Leche,[50] who was actually a court physician who had originally practiced in Chester, was sued by a woman for damages because of her husband's death after a surgical operation. The physician was fined his "goods and tenements." From this great forfeiture the king pardoned him.

These two cases raise interesting possibilities. Since I know of no instance in the years between 1350 and 1500 in which the monarch interfered in the malpractice jurisdiction of the city of London, and since these Devon and Chester cases represent comparatively severe punishment for guilt, it is reasonable to surmise that: 1) towns other than London had little complex machinery for the adjudication of malpractice; 2) whatever procedure did exist was not as carefully instigated or as carefully controlled by professional guilds, as London's was; and 3) in the absence of strong guild and powerful municipal authority, the national authority, the king, was the only arbitrator to whom appeal was possible.

Case B, again from Chester, is a straightforward accusation of a practitioner for causing death by his ministrations.[51] One element marks it as unusual. Because of the death of Roger, son of Robert, Thomas de Clotton is accused by the Earl of Chester. That it is the nobleman bringing suit, rather than a relative or other commoner associated with the patient, may have meaning beyond the possibility that the deceased or his father were servants to the earl. Here again sur-

mise, not fact, suggests that the processes for complaint against malpractice, just as the procedures for adjudicating them, were less comprehensive outside London than inside, and that the commoner might well have needed, or believed that he needed, the aid in litigation of the friendly local nobleman.

Case D has a London venue and is a garden-variety accusation for failure to cure.[52] Similar to it is Case G, for which no locale is known. Of interest here is the description of the patient whose malady was uncured—one of the infrequent references to children in these documents.[53] Simon Lynde, a stationer, accuses practitioner Peter Blank for failing to cure the diseased eye of a child.

Case E is that remarkable writ of recognizance referred to earlier as one of the prototypes for modern medical malpractice insurance.[54] The last of the minor cases, lettered F, amusingly reverses fault for failure of cure.[55] The testimony of Matthew Rutherford, accused of careless treatment of a cleric's left leg, and attached for damages amounting to 40 pounds, maintains that cure was ineffective not because of professional inadequacy but because of defiance by the patient. The cleric, Brother Richard of Guisborough, uncooperatively threw away his medicines and persisted in eating inappropriate and unwholesome foods!

Clearly these seven minor cases and the seven major malpractice cases, as well as the official edicts associated with them, demonstrate as much about medieval medical practice as they do about malpractice. First, they distinguish definitively between proper practice and inadequate practice, and between accidental error and willful or mindless evil. Such malpractice accusations as maiming, neglect, endangering limbs, deceit and falsehood, failure to cure, excessive fees, iatrogenic sequelae, worsening of original complaints, death due to medical ineptitude—all these define standards and expectations of the perfect, of which these complaints are the opposite. Further, this apprehension of what constituted malpractice was shared by three constituencies: the patients, the individual practitioners, and the professional guild organizations. Uniting the interests of these three groups against medical malpractice were the civic authorities, who simultaneously gave allegiance to them and required obedience from them.

The second contribution of the malpractice dockets and the malpractice dicta is the depiction of certain aspects of medieval medicine

and surgery as they were, not as they might have been. Habits of actual practice, not theory, and habits of accepted proper practice, are superbly delineated. These practices include diagnoses, each followed by definition, in order to distinguish between diseases or wounds which were curable as opposed to those considered incurable, for which care could not be begun; treatment planned, executed, and justified according to astrological computations; and fees for professional services granted in money or in valuables, agreed to and paid in advance, in installments, or on cure. Such accepted and acceptable practices were mutually understood by the same three constituencies: patient, practitioner, and profession. Yet again, the municipality united the concerns of these three in legislation and in its vigilant enforcement.

This pervasive presence of city authority is the third lesson of the malpractice documents. The professional medical and surgical organizations themselves proposed and then petitioned for reformation of their craft. Their self-regulation, however, was enforced by the power and ceremony of strong civic government. Intricate relations evolved between professional and civic responsibility, as in the reportage of "high risk" cases by the practitioner to the masters and hence to the highest officials of the city. The same was true of the systems of fine, forfeiture, recognizance, the "precursor of malpractice insurance," administered jointly by craft and city, and financially beholden to both. From this medicocivil unity the benefactors were the three constituencies: the patient as citizen, the practitioner as craftsman, and the guild as component institution of the city. Cases and edicts both contain one phrase which appears with insistent regularity: "the common profit," the common good, the mutual advantage. Malpractice must be reported for the common good, punished for the common good, and eradicated for the common good. Advantage accrued to the three constitutencies mutually. Of this common profit the city was arbiter and guardian.

Remarkably, the only medieval documents which depict a medical idea or medical event from all three vantage points of patient, doctor, and professional peers are the malpractice records. Of the thousands of medieval medical manuscripts and related fragments extant, some are theoretical treatises, some are accounts of medical procedures, some are complaints of theoretical follies, some are legal edicts from the courts of kings. All are dedicated to one or two of the three constituencies.

None unites theory with practice to address all three—except these dockets and dicta of medieval medical malpractice. Apparently perverse is this notion of learning the truth by investigating its opposite, error. These fascinating materials suggest the utility of perversity. Perhaps they prove that eccentric old rule, one fundamental law of historical dynamics: accentuate the negative in order to redefine the positive!

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