# What is Malpractice?

## by Darby Stranton

JOHN CRANE coughed. His throat was sore, and coughing was painful to him. He tried to suppress the impulse but could not. His wife looked up from the magazine she was thumbing and glanced at him worriedly. He wiped the corners of his mouth with his handkerchief.

At that moment a nurse came into the waiting room. "Doctor Setton will see you now," she said. Crane thanked her with a half smile. He walked through the door she held open for him. After a moment of indecision his wife decided to follow him.

Doctor Setton greeted them both and asked them to be seated. Crane took the chair just in front of the desk. His wife settled onto the leather-covered sofa.

"My throat's killing me," Crane said. "Suppose to go fishing with Ken and Seth in the morning," he added.

"And he'll go, too," his wife added with obvious resignation.

"Well," the doctor cut in, sensing a family squabble, "come inside and let's have a look at it." He led the way into his examining room. Crane followed. His wife remained on the sofa, but she could hear all that was said in the adjoining room.

"Touch of bronchitis," the doctor announced after completing the examination. "Penicillin should take care of it." At that moment the nurse appeared through another doorway. He gave her an order. She went to the sterilizer, took out a syringe, inserted a penicillin cartridge.

"You've had penicillin before, haven't you?" the doctor asked.

"Sure," Crane replied. "You've given it to me several times."

"That's right," Dr. Setton agreed. Then he hesitated, a frown crossed his face. "Had a reaction last time, didn't you?"

"Sure did, my skin itched for days," Crane said.

The nurse handed the syringe to Doctor Setton. Crane had removed his shirt. "Well, probably wouldn't

happen again," the doctor said as he grasped the deltoid muscle between his fingers. He jabbed the needle into the bunched muscle, injected the antibiotic. He withdrew the syringe, handed it back to the nurse. Crane picked up his shirt, started to put it on, but felt dizzy. While holding his shirt in one hand he wiped his forehead with the other. He was surprised to find it so wet. He remembered nothing more.

AT THE TRIAL it was established that Dr. Setton had caught Crane just before he fell over; that with the help of his nurse they had lowered him to the floor where he lay on his back breathing deeply for a few minutes. Then he ceased breathing altogether. Doctor Setton testified that he had given artificial respiration. His associate, Doctor Krantz, admitted under cross-examination that in his opinion Crane's heart had ceased to beat. How long this condition persisted could not be said with certainty. After both doctors had worked on him for more than two hours, his breathing began once again, though he remained unconscious for several more hours.

Crane ultimately recovered. At least he was able to leave the hospital. But since that experience he has been a different person. He is profoundly depressed. His face has a perpetual mask-like appearance. The neurologists and psychiatrists who testified were not certain whether he had suffered what they called "organic" damage to his brain, or whether his difficulty was "functional" in nature. But they did agree that, whatever the exact cause, Crane was completely unable to pursue his occupation, that he required continued medical treatment for an indefinite period, that his condition may improve, or, on the other hand, that he may become a helpless invalid.

Further testimony showed that Crane had experienced what is known as "anaphylactic shock," a severe allergic reaction to penicillin. The question for the jury to decide was whether or not Doctor Setton had been negligent in giving Crane penicillin. According to Crane's lawyers, the doctor knew that he had had a previous reaction, that it should have been a red light. He went through the red light and Crane was damaged.

The jury agreed. There was a verdict of $15,000 for Crane.

In every state, more and more malpractice suits are being filed each year. Significantly, more verdicts are going against the doctors. These are facts which have created considerable tension between the legal and medical professions, to say nothing of the strained relations between doctor and patient.

Doctors of about every description—physicians, dentists, osteopaths, chiropractors—are plainly disturbed by the trend. The great

majority of doctors insist vehemently that under no circumstances should they be subjected to a law suit as a result of their practice. They insist that medicine is not an absolute science, that they do not guarantee results, that they must have complete freedom of action to use their best professional opinion without the threat of censorship in a court of law. They further insist that a jury of laymen cannot pass judgment on them. And they conclude by stating that they have their own boards composed of competent trained men to police their ranks.

The legal profession takes issue with these conclusions. Lawyers who specialize in this field believe that the word "malpractice" is the biggest stumbling block. The word means "bad" practice, but actually such cases are tried under a branch of law known as "torts." Such cases are generally based on negligence. Lawyers insist that the rules of negligence apply to all. To make out a case of negligence there must be a duty, a breach of that duty, and, as a proximate result of such breach, damages.

They explain this by stating that a man driving a car has a duty to stop at a red light. If he goes through that red light he has breached his duty. Then, if as a result of such breach—that is, running the red light—he hits a pedestrian, he is responsible for all the damages done to that person. The lawyers insist that doctors are governed by the same legal principles. Thus, in the case of Mr. Crane, they maintain that when Doctor Setton knew that Crane had had a penicillin reaction it was the red light which told him to stop. He did not stop. Crane was damaged as a result. But the physicians reply that a doctor must be given the freedom to use his professional judgment. There the battle is joined.

No one believes that the medical profession should be hamstrung or harassed by the threat of recurring law suits. But, conversely, it is hard to convince the legal profession that all professional acts and their consequences should be placed beyond the jurisdiction of the courts. Lawyers agree that competent boards should police their own professions. This would certainly diminish the probability of malpractice cases. But, by their very nature, people—all people—are occasionally negligent. In such instances, if a patient is injured, he should be able to look for compensation, or so insist the lawyers.

Even if doctors will go so far as to agree that there may be an occasional instance to justify such legal actions, they then vigorously object to having a jury or a judge not medically trained pass judgment. For example, they may cite a case in which a doctor was found guilty

of removing both ovaries from a 35-year-old woman. In this instance, the jury had to decide whether or not the ovaries should have been removed. Doctors argued that such a decision could only be made by a competent physician at the time of surgery. The lawyers, on the other hand, stated that by expert testimony of other physicians, and by hospital records, they showed that the ovaries when removed were in good condition, that the pathologist who examined them so reported, that the removal of the ovaries caused severe changes in the young woman, that she was permanently damaged and therefore should be compensated. The jury agreed.

Actually, it is extremely difficult to win a malpractice suit. Very few professional men will testify for the patient in such cases. And since the burden of proof is on the patient to prove that the doctor was negligent, clearly his lawyers must be remarkably versed in the healing arts. But even if they are so trained, unless they can obtain expert witnesses who will testify as to the facts, they cannot make out a case of negligence. For this reason, in order to obtain a verdict, it is almost necessary to have a case of such apparent negligence that it is obvious to the jury even in the absence of such expert testimony.

PERHAPS if the word "malpractice" were dropped, the stigma associated with such cases would fade. Unfortunately, many people feel that a doctor who has a verdict go against him in such a suit is guilty of some crime. They believe that he should have his license revoked, that he should not be permitted to practice. This is an unfortunate reaction and the term malpractice is probably more to blame than anything else. Yet the very same people who hold such an opinion certainly do not believe that a person who has been in a traffic accident, and who is found negligent and must pay, should be forevermore barred from driving.

The question, really, is whether or not those engaged in the healing arts should be exempt from the well established rules of negligence. The doctors vigorously so argue. The lawyers, just as vigorously, argue the opposite.

Perhaps even more important is the opinion of the public—that is, the patient. All too many people believe that if they are not cured of whatever ails them, or if they have been hurt, or consider themselves damaged in any way, they are entitled to compensation. For example, take the case of Crane. The court allowed him to recover because the doctor, in not observing the red light, was negligent. But if Crane had never had a reaction to penicillin before—in other words, if there was no reason why he should not receive it—then no matter how badly the injection might

have hurt him he would not be entitled to recover. This is a hard concept for many people to grasp. It is only natural that a person should look to someone for payment, but in the absence of negligence, such compensation cannot be had.

LAW SUITS are seldom friendly affairs, and malpractice cases are no exception. But if the basic principles involved are clearly understood by the doctor, the patient, and the lawyer, there would be far less animosity than exists today. Although the lawyer, of the three, should be most familiar with these basic principles, all too often he leaps to the conclusion that if there are damages there must have been negligence.

This, of course, is not always true. It is difficult for one not trained in medicine to appreciate the decisions that the doctor is called upon to make throughout every day of his practice. Some of those decisions may prove to be wrong, but, as every lawyer must admit, wrong decisions do not necessarily constitute negligence.

It was mentioned earlier that one of the essential elements of negligence is the breach of a duty. To put it in more comprehensible language, so long as the doctor practices in accord with the standards in his community, he has not breached his duty. For example, not so many years ago very few dentists gave a patient a physical examination, or had a physician do so, before administering a general anesthetic. But today in most communities this is the practice. Consequently, if a dentist gives a general anesthetic to a patient who shouldn't have had it—and the patient dies—clearly the dentist would be held liable. On the other hand, if such is not the practice in a particular community and the patient dies, the dentist is not liable. This sounds strange and unjust, but it underscores the important fact that a man is held negligent only when he does not conform to the standards of the average person doing the same work in the same community.

In brief, the doctor must recognize that the legal rules of negligence apply to him as well as to anyone. The patient must appreciate the fact that failure of a cure, or even actual damages, do not constitute malpractice unless the doctor breaches a duty by failing to conform to the standards of his profession in his community. And the lawyer must be reminded that medicine is not an exact science, that many unfortunate results occur in the complete absence of negligence.

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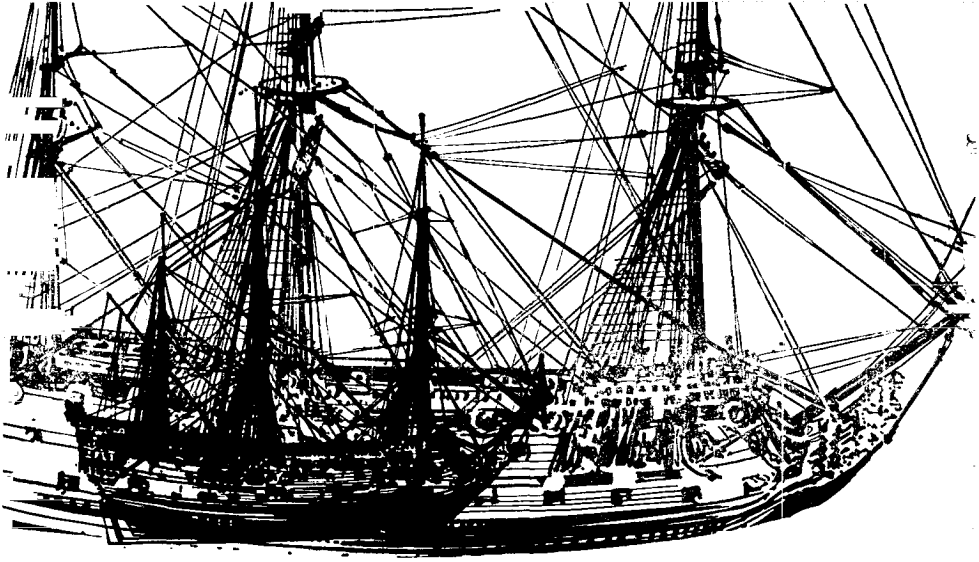
Most of us show our disapproval of gossip by asking all our friends not to repeat it to a soul.
—HAROLD COFFIN



# The Birth of a Fleet

by
**Ruth P. Collins**

*The dream of Peter the Great grew into the Russian navy*

Back in 1698 a Dutch ship anchored off Greenwich, England, and a young man of striking appearance, known merely as Mr. Timmerman, climbed down and got into a small boat. He was rowed up the Thames to the foot of Norfolk Street, where he hurried into the big quiet house near the river's edge.

Historian Macaulay calls this "The most momentous visit in all the world" for it marked an epoch in history.

Voltaire describes the visitor as one of the most extraordinary men who ever lived.

Mr. Timmerman, in fact, was the Tzar of Russia, young Peter I, later known as Peter the Great. He had come to England to learn how to build a navy.

Peter had been crowned Tzar when only nine years of age. Russia at that time was a vast landlocked area, its only outlet to the sea was Archangel in the far North, frozen fast eight months of the year. It boasted not one ship. The little Tzar in fact never saw one till he was seventeen years old. As a child he had had such a dread of water that he trembled even to cross a bridge. One day, however,