The Court Archive:
Medical Malpractice

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Medical malpractice lawsuits are now a common fixture in American courts, but 250 years ago, they were practically nonexistent. William Blackstone, in his 1760s *Commentaries on the Laws of England*, noted "mala-praxis" as an actionable injury caused by the neglect or unskillful management of a physician—an action that broke the trust between the doctor and patient. The common law remedy called for an action of trespass on the case, which covered injuries caused without the use of force.

Although malpractice was an option, such suits were rare. When it did occur, it was generally because of ethical violations or death, and juries almost always sided with the doctor. Physicians were scarce, and a malpractice judgment could deprive an entire community of medical care.

By 1835, social mores changed, as did the public's expectations. During the Jacksonian era, the common man pushed back against elitism, and the public was more willing to hold doctors accountable for their actions. Also, new ideas regarding wellness began to challenge traditional medicine. Alternatives such as homeopathy, naturopathy, hydropathy, and Thompsonian medicine offered alternatives for treating common maladies. This intra-professional rivalry between traditional and alternative medicine frequently found its way into malpractice lawsuits with one side attempting to discredit the other in malpractice suits.

Almost all medical malpractice claims after 1835 concerned dislocations or broken bones. Before the 1830s, doctors often opted for amputation in the case of severe fractures. However, with advances in treatment, doctors were now more willing to set a broken bone to save an injured limb. Ironically, doctors increasingly became victims of their own medical advances. when attempting to set rather than to amputate. If the break healed poorly, patients sometimes sued for a malpractice damages.

The legal threshold for juries to consider was whether the physician exercised ordinary care, diligence, and skill. In rural Illinois, the standard was often lower than in large cities. Juries were generally reluctant to find against doctors who acted diligently, even if the medical treatment may have been substandard.

The first Illinois Supreme Court medical malpractice decision was *Ritchey v. West*, 23 Ill. 385 (1860). Keziah West broke her wrist, and Dr. Powers Ritchey treated the fracture. West claimed that Dr. Ritchey promised to examine her the next day, but he failed to do so. West's wrist healed improperly, leaving it deformed. West sued Ritchey for medical malpractice, and the jury awarded her $700 in damages. Ritchey appealed to the Illinois Supreme Court, which affirmed the circuit court's judgment. Justice Pinkney Walker used the ordinary care, diligence, and skill standard in his opinion, stating that Dr. Ritchey's failure to return the next day to examine his patient constituted negligence and failing to provide ordinary care and diligence. Other states affirmed this legal principle of ordinary care, diligence, and skill.

State appellate courts saw a dramatic rise in malpractice cases in the nineteenth century. From 1790 to 1830, there were only two decisions on this subject. From 1830 to 1860, there were 21, and from 1860 to 1890, the number increased to 117. Like all other legal issues, medical malpractice reflects social and cultural trends and demonstrates that the law is constantly evolving to meet the demands of a growing and diverse population.

Today, nearly one in three medical professionals have been sued for malpractice at some point in their career. Roughly 20,000 new suits are filed every year in the United States. In Illinois, the last four years have seen 6,400 adverse action reports and 2,000 medical malpractice payments.