Editorial

This issue's featured article "On the Tort Liability of Psychiatrists" was prepared by Sue E. Fishalow during the fall of 1975. Ms. Fishalow is a senior law student at the New York University Law School and has a deep interest in forensic medicine. Her husband is a physician and she attended the Medical School at Johns Hopkins before switching to law school. Her article is a comprehensive report on malpractice liability of psychiatrists and cites most of the cases and authorities. It does not purport to make an exhaustive analysis of the subject nor to deal with current proposals for the reform of malpractice liability.

Those especially interested in the general subject of medical malpractice liability may find most helpful the *Report of the Special Advisory Panel on Medical Malpractice*, State of New York, released in January of this year. In addition, *Medical Malpractice: The Patient Versus the Physician*, a study submitted by the Subcommittee on Executive Reorganization to the Committee on Government Operations, United States Senate, 91st Congress, 1st Session, dated November 20, 1969, contains much valuable information. Also, a new book on the subject by Alan R. Rosenberg and Lee S. Goldsmith is reviewed elsewhere in this issue.

In a society in which consumers increasingly are becoming active and vocal and the price of everything, including mental health services, is on the rise, it is likely that malpractice litigation will increase unless some other method is found to resolve claims. Unfortunately—from the standpoint of some if not most physicians—there are constitutional and legal limitations on alternative methods of resolving physician-patient conflicts. Recent decisions from Florida, Illinois, and Tennessee have held unconstitutional state plans which required that malpractice suits be submitted to arbitration or mediation panels before suits could be instituted for damages. [See A.T.L., Newsletter, Vol. 19, No. 1, p. 18 (Feb. 1976).] Unless these decisions are reversed, only a voluntary plan may withstand constitutional scrutiny.

It may be scant comfort to physicians and psychiatrists to know that other professionals also are being subjected to malpractice litigation. Recently, a lawyer telephoned me to ask whether, in my opinion, an attorney could be held liable in damages for economic harm suffered by his client because he had seduced her. Ordinarily, consent of the seduced (adult) female would bar the suit, unless there existed a special relationship of trust and confidence which imposed a special duty. In this case, however, the female client was seeking a divorce. The attorney knew, or is presumed to have known, that the defense of recrimination could bar her action against her husband for divorce, or that her adultery would forfeit any claim she may have had to alimony. The husband learned of the seduction and was successful in barring the wife from alimony under New York law. The former wife then consulted the lawyer, who telephoned me, and I had to tell him that although he presented a case of "secondary loss" rather than "secondary gain," the suit was viable if the seducer was not judgment-proof.

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