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A SYMPOSIUM ON PROFESSIONAL NEGLIGENCE

PROFESSIONAL NEGLIGENCE—SOME GENERAL COMMENTS

WILLIAM J. CURRAN*

An examination of the tort liability of professional people necessarily involves two areas: (a) an examination of fact situations peculiar to the activities of the various professions, and (b) an analysis of the theoretical basis for professional liability as distinguished, if at all, from any other form of tort liability. In the articles to follow in this symposium, there is a concentration on a particular professional group in addressing each of these questions. In this introductory comment, therefore, an effort will be made to examine some of the general principles of professional liability which may be applicable in many areas.

First, we may pose the question of whether there are, in fact, any general principles of professional liability beyond the ubiquitous negligence standard of "the reasonable man"; whether, in fact, we are not here discussing merely the particular application of otherwise general law.

The question demands, it seems to me, some analysis of the negligence standard itself, the baseline from which we must operate.

THE STRUCTURE OF THE REASONABLE MAN

Negligent conduct involves unintentional harm resulting from a lack of care. Since intent is not being determined to establish fault, some standard of carefulness must be established against which individual conduct may be measured. But how is this to be done? The first criterion one might expect is that of the general average of the population. But the law says this is not enough. We do not judge negligence on the basis of average general conduct, we judge it on average carefulness, or average *prudent* conduct. There is a certain "oughtness" in this requirement; a demand that people must act with better than merely average conduct to protect others from harm. Also, juries are

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told that the standard of care requires *reasonableness*, or, a man must exercise "average reasonable prudence."

The standard of care in negligence cases is thus expressed in words. But how is it applied to the person before the court? This problem is usually presented in two forms: (a) does a jurymen use *himself* as the object of identification; or (b) does he use the person before the court (the defendant, where primary negligence is at issue)? It is clear law that a jurymen cannot use himself, *i.e.*, he cannot judge the case on the basis of what he himself would have done under these circumstances.¹ The second question is more difficult. Does he use the defendant? In a way, yes, he does, but not in an entirely subjective way. There is much of an objective nature to this test. Therefore, the law suggests to the jury that they first establish what "the ordinary reasonable prudent man" would have done under these circumstances and then compare these requirements to what was actually done by the defendant. In so doing, the jury is forced to divorce the standard from either themselves or the defendant and to apply it through a fictitious entity.

This may seem a rather simple process. It is not. Fictitious men cannot be built merely of ordinary reasonable prudence. They must have flesh and blood as well. How tall is the reasonable man? How old is he? How intelligent? How much schooling has he had?

Basically, these questions are resolved by filling out the reasonable man with all of the *physical* characteristics of the defendant himself. If the defendant is blind, then he is measured according to the expected conduct of an ordinary reasonable prudent *blind man*. Individuals in our society must, therefore, act with sufficient care to compensate for their physical defects to the extent that they are able in order to avoid harming other persons or themselves.² When it comes to matters of the mind, we apply a more clearly objective test. We impose a requirement of *reasonable* prudence. This implies intelligence, rationality. It is applied in spite of the fact that the person before the court may not be able to comply with it because of mental deficiency or mental illness.³ The only time this requirement is not imposed is when it is coupled with another factor, chronological age. Infants are judged quite subjectively in regard to intelligence⁴ as are "persons of an advanced age."⁵

1. *Mayor & Council of Americus v. Johnson*, 2 Ga. App. 378, 58 S.E. 518 (1907); *Warrington v. New York Power & Light Corp.*, 252 App. Div. 364, 300 N.Y. Supp. 154 (3d Dep't 1937); *Louisville & N. R.R. v. Gower*, 85 Tenn. 465, 3 S.W. 824 (1887).

2. Some of the more philosophical discussions of the proposition: HOLMES, *THE COMMON LAW* 108 (1881); CAHN, *THE MORAL DECISION* 92 (1955).

3. Bohlen, *Liability in Tort of Infants and Insane Persons*, 23 MICH. L. REV. 9 (1924); Shulman, *The Standard of Care Required of Children*, 37 YALE L.J. 618 (1927).

4. 2 RESTATEMENT, TORTS § 283 (1934).

5. *Johnson v. St. Paul City Ry.*, 67 Minn. 260, 69 N.W. 900 (1897).

INTELLIGENCE AND KNOWLEDGE OF THE REASONABLE MAN

If we speak then of adults under this standard, we see that a general average intelligence, or reasonableness, is required. But this is not enough, men act not only on the basis of intelligence, but with knowledge of the world about them. What kind of knowledge does our reasonable man possess? Here, I believe, we have a mixture of the objective and the subjective. Individuals are held to know certain things at their peril, *i.e.*, that most highways are slippery when wet; that automobile tires are dangerous when worn through to the fabric, etc.⁶ Furthermore, a defendant will be required to use any special knowledge which he *should* possess because he lives in a certain geographic area, or municipality. In addition to these general matters, the defendant is ordinarily required to apply any specific knowledge, however obtained, which would affect his conduct under the circumstances.⁷ For example, if he were actually aware that repairs were being made on a particular road, he would be required to use greater care in driving over it than would the ordinary driver. Knowledge can be obtained through education, or through formal training, as well as through experience. The defendant is required to use any special knowledge he has obtained in this way.

NEGLIGENCE IN PROFESSIONAL CONDUCT

The above is a sketch of the basic features of the standard of care in negligence law. As such it is applied to the general conduct of man. Lay jurors can understand the standard and judge it because they all engage in such conduct. When we come to professional activities, however, we have new problems. How much of the above outline continues to be applicable?

We will still require of the professional man prudent conduct and reasonableness, or basic intelligence. The physical characteristics of the defendant himself will be used, but with modifications. We are now about to judge not ordinary carefulness, but *skill*. There is a distinction here. In the ordinary case, the jury may be concerned with whether an individual should have looked both ways before crossing a street, or intersection, etc. In these cases, they examine only simple actions influenced by one central thought—looking, reading, slowing down. They are perhaps almost more mental activities of caution rather than actions. In the case of skilled work, on the other hand, much more is involved. The action itself is extremely important. Simple mental processes do not control it. The defendant must,

6. *Delair v. McAdoo*, 324 Pa. 392, 188 Atl. 181 (1936); Seavey, *Negligence—Subjective or Objective?*, 41 HARV. L. REV. 1 (1927); Note, 23 MINN. L. REV. 628 (1939).

7. PROSSER, TORTS 132-35 (2d ed. 1955); Seavey, *supra* n. 6.

therefore, possess certain physical abilities in order to master, in at least an acceptable way, the skills demanded. The surgeon must not have shaky hands, no matter what his age or physical condition.

A professional service is made up of learning and skill. If a man offers a certain service, he must apply to it his special education, experience, and skill. But this is not different than the ordinary rule outlined above: the reasonable man is required to use his own knowledge where it is relevant to his conduct in *all* cases. The differences which occur in this area come about in different ways. First, a certain amount of special skill and knowledge will be *imposed* regardless of whether the defendant actually has it as long as he holds himself out as being a certain type of professional man. This is a contractual or a misrepresentation theory. In most cases, it results in the fact that very little evidence of actual skills or special training is submitted to the jury. The plaintiff relies on this general requirement. Secondly, and here we get to the heart of the matter, to apply the general standard of care in cases where the defendant does actually possess skill and learning in his field would make the test of professional negligence almost totally subjective. It would be very difficult to apply and possibly quite oppressive to the highly trained specialists in the various fields. To avoid both of these problems, an objective standard is applied in our American courts. The standard chosen for all professions would seem to be basically the same, *i.e.*, the general average of professionally acceptable conduct.⁸ This is a standard of *minimum* professionally acceptable conduct. It is the learning and skill "ordinarily possessed and exercised" by the profession. This is a rather questionable standard. As we have seen, in the "reasonable man" concept, the law requires more than average conduct, it requires average *prudent* conduct. This is "up the scale" from the average. Yet for professionals, we seem to be satisfied with average or minimum acceptable conduct. Just in case even this standard be considered too high, however, most states allow an adjustment on the basis of where the defendant practices. He is required to exercise only that skill and training ordinarily possessed in his or a similar community.

APPLICATION OF THE STANDARD

The proof of professional negligence presents very special problems for the courts. Most fundamentally, by the very nature of the conduct involved, the lay jury is rendered incapable of con-

8. *Cowles v. City of Minneapolis*, 128 Minn. 452, 151 N.W. 184 (1915) (engineers); *United Dentists, Inc. v. Bryan*, 158 Va. 880, 164 S.E. 554 (1932); Prosser, *op. cit. supra*; REGAN, *DOCTOR AND PATIENT AND THE LAW* 17 (3d ed. 1956); Notes, *The Accountant's Liability—For What and to Whom*, 36 IOWA L. REV. 319 (1951); *The Bases of the Attorney's Liability to his Client for Malpractice*, 37 VA. L. REV. 429 (1951).

structing the standard of care. As Charles Curtis has said, there is very little "law" in an ordinary negligence case.⁹ The jury decides nearly all issues. This may not be entirely desirable, but it is at least within the context of a legal institution. The system depends on a theory of neutrality of decision. The jury is at least neutral in regard to the outcome. In the professional case, however, except in rare instances, the jury cannot judge the conduct. Witnesses must be called to do this for them. The quasi-legal function is transferred from the jury to the only people who *can* perform it: the profession itself. (Of course, the jury has the last word: almost totally a question of credibility between the witnesses.)

How have the professionals served in this responsibility? Even though the standard of care they are asked to apply is in itself quite minimal, the professionals have not performed well. It is well known that there is a reluctance among all of them to give evidence against their brothers. Perhaps the most reticent are lawyers themselves. Certainly the most outspokenly belligerent about the whole subject are the physicians.

But is it really a matter we can blame entirely on the professions? Can we expect to cast aside the theory of neutrality of judgment and expect the alternative to work? Every engineer witness identifies himself with the defendant engineer, not with the injured plaintiff. We cannot expect people to judge themselves.

And yet, even where we are able to obtain professional witnesses for the plaintiff, what is their function? We ask these witnesses to give an "expert opinion" (because only experts can give opinions in court) on whether the defendant's action was in conformity to the skill and learning "ordinarily exercised in the profession," or, whether it was "professionally acceptable conduct." Does any one practitioner know the answer to this? Is there really an answer? Perhaps by some consensus or statistical study answers *might* be obtained. In the theoretical basis of evidence law, is the question fairly put to an expert witness? For one thing, that old chestnut about "invading the province of the jury" has always bothered me on this.¹⁰ Also, when we ask a jury to answer such questions, not only are they neutral, but they act in a body which must deliberate together and reach a unanimous decision. Witnesses on the other hand who give "opinions" act individually and in an uncontrolled way. Their opinions may not be representative. They represent themselves, really, not "the profession." I wonder if we don't actually have *individuals* judging the defendant and *not* the profession, as I said earlier.

9. See CURTIS, *IT'S YOUR LAW* 89 (1954). "What does the law know about negligence? Nothing, almost nothing, only what is too obvious to argue about."

10. 2 & 7 WIGMORE, *EVIDENCE* § 673 & § 1920 (3d ed. 1940). Wigmore correctly denounces the theory, but it remains with us in more states in some form.

It is very difficult to offer a solution to this problem. Non-legal professional groups often say they should be judged "by their fellows" —without realization that they are already in this position to a large extent. If they do realize it, they want the jury entirely eliminated, even as a final arbiter, with the replacement being some type of expert board. Or, it is also suggested that professional negligence be eliminated as a cause of action and a strict liability insurance system be installed whereby patients or clients would automatically be compensated for any injuries arising out of the professional activity. Perhaps these are feasible. If not, perhaps the question of constructing the professional standard of care ought to be a function of the court, not the jury, under an expanded theory of judicial notice.¹¹

SOME PROBLEMS OF PROOF

In spite of the huge obstacles that lie in front of them, a few hardy lawyers still seem to bring professional liability cases to the courts each year. It seems to me that as a matter of proof, the bulk of the cases fit into two major categories:

- (1) Cases where an accepted procedure was not followed by defendant; and
- (2) Cases where the expected good result merely has not occurred.

The first thing we should note in this listing is what is *not* included. The major type of ordinary negligence case might be described as an "eye-witness case," *i.e.*, a bystander or the plaintiff himself testified as to the actual conduct of the defendant in carrying out an act in a careless manner. The act is itself proper; it is its *execution* which goes wrong. For example, the defendant motorist drives too fast, or rounds a turn too closely, etc. This type of case is infrequent in professional liability litigation. Eye witnesses are scarce. The necessary expert witnesses just weren't present when the negligence was performed. Perhaps no one was present except the defendant himself. The negligence is proved either by making the procedure applied unacceptable professional conduct, or by asserting the bad result itself warrants certain conclusions.

This fact-of-life of the cases may mean that certain types of negligent conduct, go undetected at times, at least where the result obtained can be adequately explained on other grounds.

Now taking those cases where it is the procedure that is in question: As indicated earlier, the non-negligent professional man must follow those practices "professionally acceptable," or "commonly

11. A full development of this theory would take more pages than are consumed in this present note. See, however, Morgan, *Judicial Notice*, 57 HARV. L. REV. 269 (1944).

engaged in" or "within minimum acceptable practices." An expert witness will be asked if the procedure used by the defendant was within these bounds. As indicated earlier this is a difficult question for any individual practitioner. How does he become acquainted with *all* acceptable procedures, particularly those used *earlier* than his time of training and those developed *after* he was trained? When is a procedure "unaccepted" within a profession? It is probable that the test is easily applied only when the defendant's conduct is a quite flagrant violation of good practice, as where no x-ray is taken before setting a fracture. The only other type of case where liability is apt to be imposed is where the procedure is "new" or "experimental." But there is a difference between these two. One might say that any practice starts out as experimental, then becomes a new procedure, and then becomes commonly accepted. At what stage in this development does its user cease to apply it at his own peril? I would think it is a part of legally accepted practice while it is still a "new procedure," as long as a significant number of the profession is now using it in ordinary practice (not with experimental patients or clients). Otherwise, the law would be penalizing intelligent advances in the professions. There is no doubt, however, that this is an area of some difficulty for professional people. They are aware of the admonition about experimenting on their patients or clients at their own risk. Those who try to keep up with progress often have a moment of hesitation before adopting a *new* procedure, no matter how sure they are of its efficacy. That they should have at least a moment of hesitation is probably a good thing, however. The law should not penalize intelligent progress, but it need not license mere change as improvement.

THE PROBLEM OF THE BAD RESULT

To the professionals themselves probably the single most disturbing fear is that the law will call them to answer in damages merely because the result they obtained was bad. Lawyers perhaps too often shrug off this complaint. It is a real fear, however, and has some truth in it both as regards filing of claims and even successful litigation by plaintiffs.

It is axiomatic that a bad result is not in itself proof of negligence, yet it comes close to it at times. In some cases where *res ipsa loquitur* is invoked, it is actually enough to sustain the burden of proof. In other situations, it nevertheless behooves the defendant to explain the reason or reasons for the bad result to the client or patient. If the client or patient is satisfied, no legal action results. If he is not satisfied, or if someone else who influences him is not, at least a claim may be filed with the defendant's liability insurance carrier. This fact

alone is very disturbing to professional people. Unlike the ordinary negligence case, the claim alone is a reflection on that person's professional abilities and standing.

In some professional areas, the mere happening of a bad result does give rise to a justifiable claim. This is most apt to happen where the defendant warrants his work or makes certain types of representation. The most common is the accountant who certifies financial condition. He is often found liable in damages in such cases if the financial condition of a business is not as certified, even though he himself (and his employees) were not negligent.¹² The basis is express warranty or a representation "of one's own knowledge" for which strict liability is imposed.¹³ Such a situation can apply to engineers and lawyers as well where they make certifications or prepare reports. Strict liability for a poor result is much less a risk in medical fields, but it can occur with plastic surgeons or others who represent or guarantee a certain result, or in hospitals where express or implied warranties may be imposed in supplying materials and drugs. In another area, physicians may find themselves liable even where no negligence is found if they fail to obtain an effective consent for the treatment.¹⁴ The action would, of course, be battery or assault and battery.

SOME QUESTIONS OF ETHICS

The subject of professional liability cannot be dealt with effectively without some consideration of the ethical problems involved. It seems to me that they are among the most difficult questions in the field. They are often inextricably woven into the legal issues and the problems of proof.

The ethical questions can be divided roughly into those presented to the defendant-professional man himself, to attorneys for either side, and to the professional witness. For the professional man himself the problems arise in the relationship with clients or patients. There is a well settled ethical foundation here which imposes high demands on the professional man to be frank and honest in his dealings with the client or patient. The client or patient must be told what to expect in services. Good results should not be guaranteed unless this is honestly what is expected. "Hard sell" pitches are quite foreign to a professional relationship. In the area of professional liability, "hard sell" tactics can also be dangerous when the promised result does not occur. A client or patient who is led to expect too

12. Harper & McNeely, *A Synthesis of the Law of Misrepresentation*, 22 MINN. L. REV. 939 (1938); Rouse, *Legal Liability of the Public Accountant*, 23 KY. L. REV. 1 (1934); Note, *The Accountant's Liability—For What and to Whom*, 36 IOWA L. REV. 319 (1951).

13. *Ultramares Corp. v. Touche*, 255 N.Y. 170, 174 N.E. 441 (1931).

14. See REGAN, *DOCTOR AND PATIENT AND THE LAW* 71 *et seq.* (3d ed. 1956).

much may well blame the bad result on negligence by the practitioner. The physician is in the greatest dilemma here. He cannot oversell, but he can't afford to be so honest about the treatment that he raises unnecessary fears and anxieties in the patient. It is often a difficult balance to maintain. Most physicians lean in favor of overselling to avoid disturbing the patient. Sometimes they are able to reveal more objective factors to the patient's relatives, but this is not always the case. At times this benevolent deceit in medical areas can be carried to extremes, however, as we will discuss later. At the end of a contract when the expected result does not occur, the client or patient is of course entitled to an explanation. If the professional man is aware of the fact that it is due to negligence or other error on his part, he is obliged ethically to make a disclosure of this and to rectify it or compensate for the loss. He should carry liability insurance adequate to cover such situations. However, I'm afraid such simple, ethical dogmas are not so simple to follow. Such disclosures may damage the defendant's general professional reputation. It may make it difficult for him to retain adequate professional liability insurance. Rationalization is, therefore, very tempting in these cases. In its first form, it means that the professional man may explain the bad result on some other ground than his own negligence. Since he is so often in control of the facts, this method very often works. He may even convince himself. The second form of rationalization is to cover up the negligence on the ground that such revelations do harm to the profession generally and indirectly to patients because it shakes their confidence in the group. This is benevolent deceit in its highest form. It seems to me quite unjustified. It arises out of some instances of what might be justified reluctance to call wide public attention to suppression of deficiencies, particularly in medical areas. It may well be that the general public should not be told about the shortcomings in current cancer research, or about certain failures in radiation hazard controls, or about the infant mortality in the local hospital. Such facts may merely create considerable apprehension without doing any real good. But this does not excuse a refusal to tell the truth to a patient about his own bad result.

Professional liability cases present special ethical problems for attorneys as well. They must keep in mind that such cases cannot be treated in the same atmosphere as ordinary negligence practice. The professional reputation of the practitioner should be respected and guarded by both sides, plaintiff and defense (insurance representative) alike. An attorney consulted by a dissatisfied client or patient should not encourage speculation into negligence where it is unwarranted or too greatly emphasize the need for litigation. After satisfying himself that the client is in earnest and his complaint, if true,

has some merit, the attorney should make an effort discreetly to investigate the facts. A meeting can be arranged with the practitioner in the presence of the client and anyone else the practitioner wishes to be present. A request for examination of records can be made if this inquiry does not settle the matter. If the practitioner refuses to cooperate, contact with his insurance carrier may be necessary. Also, contact with the appropriate committee of his local professional association may bring results. Involvement of the latter is often a fine method of approach, not only to obtain cooperation, but to keep the situation from developing into legal action, and here I include contact with the insurance carrier as legal action. Should the plaintiff's attorney decide that the claim warrants compensation, he should then enter negotiations with the insurance carrier as in any other claim. If the carrier asks that the case be reviewed by the local professional association, the plaintiff's attorney should ordinarily cooperate. He need not reveal the names of any of his professional witnesses, however, if he is entitled to keep these confidential under the state's discovery procedures. He should, of course, allow further reasonable physical examination of his client by the carrier's or the association's physicians if the claim is one of personal injury, or should allow an examination of financial condition of a business if this is involved in the claim. Defense attorneys in professional liability cases have special responsibilities as well. They should guard against undue publicity to the claim, but should cooperate in explaining the situation to the plaintiff's attorney so that litigation may be avoided. Also, in settlement negotiation, the ordinary practice of paying some questionable claims in order to avoid suit should be treated cautiously in this field. Paying such claims is looked upon by the professional man and many of his colleagues as an admission of negligence. One may say that non-legal professional groups lack a certain sophistication in this regard, but the position should be respected.

For lawyers called into cases of possible negligence by attorneys, the ethical problems are particularly delicate. Basically, of course, their obligation to such clients is the same as in any other consultation on a professional liability claim. Delicacy arises in that the lawyer must be careful not to accept such cases where they may not be handled in a completely professional manner, as where the attorney involved as a possible defendant is an associate in some way in litigation or business. If a case against an attorney is accepted, at least for investigation, it should be handled as indicated above for any other professional liability claim, including contacts with the local bar association. Since the bulk of lawyers do not carry professional liability insurance, dealings may well be more directly with the

practitioner than with many other professional people. This situation also calls for delicacy of treatment.

Lastly, we may examine the ethical considerations in the role of the expert professional witness called to give an opinion on the conduct of a colleague. As a matter of personal ethics, no one is required to give opinion evidence if he does not wish to do so. (It is extremely rare for an attorney to subpoena an expert witness, so the decision is up to the person.) Of course, if he was involved in the client's case in any way, he would be obliged to disclose any facts on which his is questioned. This is factual testimony, not opinion evidence. In some cases, it has been charged that there is a "conspiracy of silence" in regard to giving opinion evidence on behalf of plaintiffs in professional liability cases. In medicine, at least, there may be some substance to the claim, at least in the fact of widespread reluctance to testify for plaintiffs. The existence of a conspiracy, some united action, seems highly unlikely, however.

When a professional person asked to give an opinion on behalf of a plaintiff is made aware that he is the only person who could be called on behalf of the plaintiff, a different issue arises. In actual fact, such situations may be rare but they may occur. There would then be at least a moral obligation on the professional person to give his opinion, if not an ethical demand. I believe the ethical codes of many of the professions would support such a requirement. Certainly it would exist in regard to attorneys, since along with their own high ethical standards they are officers of the court, of the judicial system itself.

THE FUTURE

The law of professional liability is almost totally common law. Its basic principles have changed very little over the years. Dean Prosser made almost no revision of the pages on this subject matter in his text from the first edition in 1941¹⁵ to his second edition in 1955.¹⁶ I would doubt, however, that conditions will remain the same for another fifteen years.

The courtroom litigation of negligence cases based on a fault principle and providing a general damages verdict has been subjected to very severe criticism during this century. Failings in the system are more evident in regard to industrial and automobile accident litigation, but they are nonetheless serious in professional cases. The fault principle requires that professional liability be based on proof of negligence. This requires the establishment and application of a standard of care as indicated earlier with all of its attendant problems. It necessitates also an advocacy method of presenting evidence,

15. PROSSER, TORTS 236-38 (1941).

16. PROSSER, TORTS 132-34 (2d ed. 1955).

of finding the facts, and of producing witnesses. All of these requirements are especially difficult in professional areas. Furthermore, courtroom litigation is nearly always before a jury, at least as long as a personal injury is involved. The jury system has not proved very effective in these cases. Lastly, the fault principle has the result of branding the defendant incompetent within his profession. This factor is largely responsible for the tenacious and emotional manner in which the defendant, his fellow professionals, and their professional societies fight malpractice claims.

Civil litigation of professional liability claims also necessitates the application of general damages with its high verdicts in personal injury cases. These professional people are not unaware of the verdict split in these cases (one-third to one-half of the recovery to the plaintiff's attorney).

If the above be looked upon as some of the problem areas in professional liability, it can be seen that they are very generally involved in the theory of Tort law and civil litigation and not merely professional negligence cases. Reforms, if they come, may well be generalized throughout Tort law or personal injury litigation. Any broad change which occurs is most apt to result in an insurance-based compensation system carried by the professions or by their clients and patients. It may come as part of a government-sponsored plan, at least in the personal injury area.

I really don't think that such a change as that outlined above is in the too far remote future either. After all, title insurance companies might be called the first step in this area and this change has occurred in the legal profession itself—where, it is said, change is least apt to appear. Some other business areas, particularly where some form of strict liability for professional error has been applied, have obtained comprehensive insurance coverage as a cost of doing business, often on a contract-by-contract separate coverage. Medical malpractice, our most aggravated area today, is probably next on the list. Physician's liability insurance is sufficiently prevalent to assure a basis for working out a planned reform. Dissatisfaction with the Tort system among the medical profession seems just about irreconcilable. The medical societies are very active in the field and will provide the organization and political acumen necessary to accomplish a change. The necessary conditions for revolution would, therefore, seem to exist.

CONCLUSION

The above are all of the general comments which seem feasible at this point. More detail, not only in these areas, but in regard to actual professional practices and procedures will follow in the articles in this

symposium. To my knowledge, no review has ever before undertaken the task of reviewing so many professional activities in so thorough a manner as is found in these pages. I wish to add my grateful thanks to what I know will be that of the readers for these efforts on the part of the contributors and the editors of the *Vanderbilt Law Review*.

