

# **Annual report of the Council with balance sheet of the London and Counties Medical Protection Society : 1945**

## **Contributors**

London and Counties Medical Protection Society.

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**ANNUAL REPORT**

of the COUNCIL with BALANCE SHEET  
for 1945.

FINANCIAL REPORT pages 33-34

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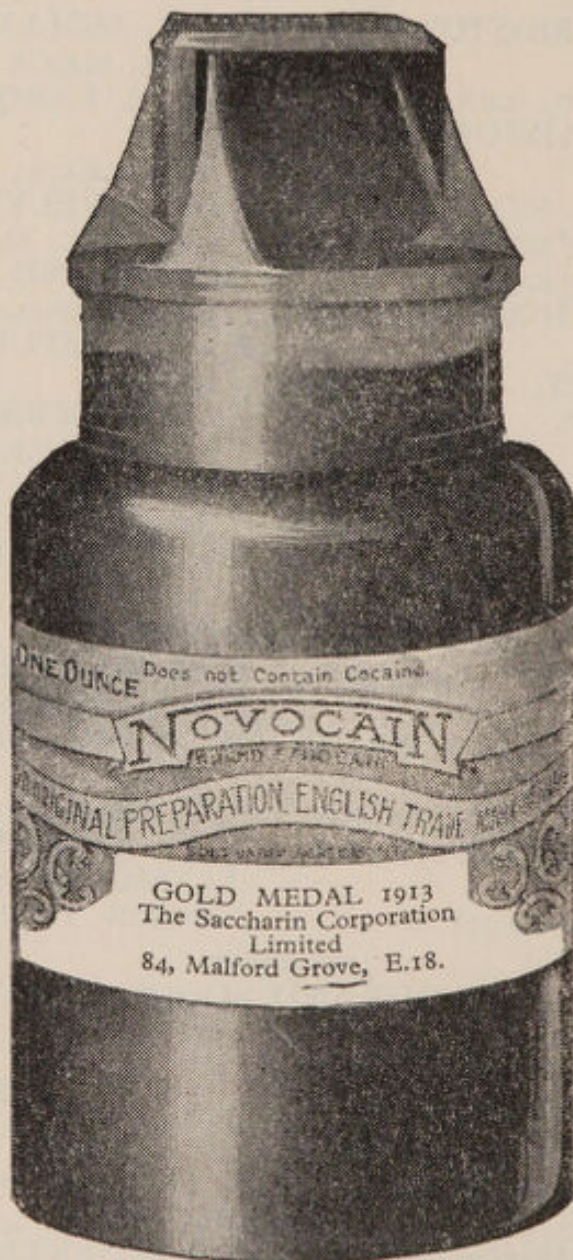
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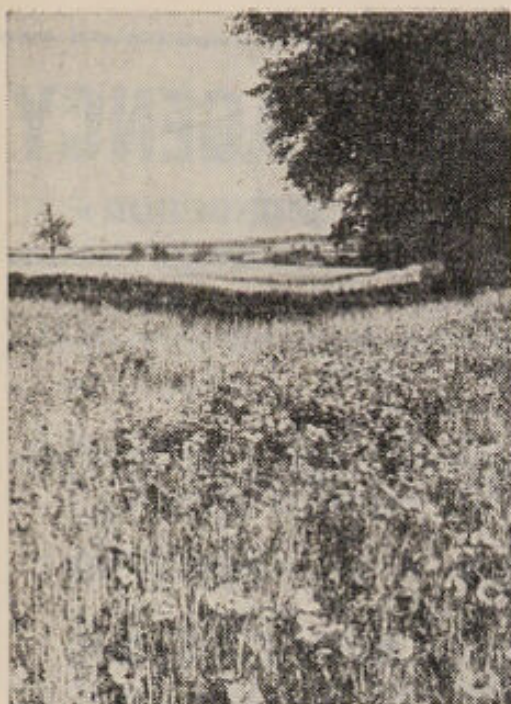
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### DO

- 1 Send full particulars when applying for assistance.
- 2 Communicate with the Secretary on all points of doubt or difficulty.
- 3 Inform the Society at once if any allegations are made against you.
- 4 Inform the Society at once if you receive a solicitor's letter and send it to the Society with a full statement.
- 5 Exercise great care in giving certificates.
- 6 Keep notes of cases and make sure that all records are accurate.
- 7 Keep any material which has a possible bearing on a case, e.g., the remaining part of a broken needle.
- 8 In all cases of possible fracture obtain an X-ray report whenever practicable.
- 9 Make yourself familiar with your obligations under any contract into which you enter.
- 10 See that your partners and assistants are members of a recognised protection society.
- 11 Pay your subscription immediately it falls due, or make use of a banker's order for this purpose—it saves you trouble.
- 12 Refrain from doing anything which may be construed as advertising.

### DO NOT

- 1 Disclose to patients or their solicitors that you are a member of this Society.
- 2 Reply to any letter from a patient or solicitor which threatens proceedings or makes allegations against you—send it to the Society with full details.
- 3 Delay until action is imminent before getting into touch with the Society.
- 4 Commence litigation against a patient without first consulting the Society.
- 5 Send to the Society letters from other parties with no information or comment on your part.
- 6 Commit breaches of professional secrecy.
- 7 Give information to the Police concerning possible criminal offences in connection with your patients, e.g., miscarriages, without first consulting the Society.
- 8 Give reports to insurance companies or other parties without your patient's consent.
- 9 Hand over X-ray films, except to a registered practitioner.
- 10 Make derogatory statements about another practitioner's work.
- 11 Act as both anaesthetist and surgeon save in cases where this is unavoidable.
- 12 Cover or associate with unqualified practice.

## FOREWORD

On account of the paper restrictions, six years have elapsed since the Society was able to publish a full Annual Report. During these years much work has been done on behalf of members, and many cases have been undertaken. Throughout the war the Society has been without its Secretary, Dr. R. W. Durand, who was serving with the Royal Air Force. In his absence, Miss Remington, now appointed Assistant Secretary, and Mr. Rayner, now appointed Financial Secretary, carried on the work of the office with the assistance of the Society's solicitors. Neither the Society nor its solicitors moved from their offices and both suffered "near misses." The Council met during air raids and whilst V-1s and V-2s were falling. During these years the membership increased by 4,000 odd and the funds of the Society by £32,000.

While this Report applies particularly to the year 1945, an account is given in the following pages of some of the most important and interesting cases undertaken by the Society during the years 1939-45.

Membership of a protection society is of great importance and pending legislation is likely to increase considerably the number of occasions on which a practitioner finds it necessary or advisable to seek expert advice or assistance. The public is increasingly litigious and tends to complain to "authorities" regarding the work of a practitioner, apart altogether from legal actions, more frequently than in 1939.

Members often seek advice on matters quite outside the Society's scope, and although the Secretary and staff are always glad to help and advise members on any matter, if a case is outside its scope active steps cannot be taken by the Society.

## ANNUAL REPORT OF THE COUNCIL

The Council is pleased to be able to report that the past year has again been a successful one for the Society. Dr. R. W. Durand has been released from the Services and resumed his duties as Secretary on 15th October, 1945. There has been a satisfactory increase in membership, 1,087 new members having been elected during the year. Temporary membership, i.e., persons who were placed on the Medical Register temporarily, has decreased, but Overseas membership has increased and there are now 310 Overseas members. During the year, 275 members have died, 162 have resigned, and 145, who have allowed their membership to lapse, have been removed in accordance with the provisions of Article 8 of the Articles of Association.

During 1945, 1,040 applications for advice and assistance were received. Practitioners returning to civilian life on release from H.M. Forces are finding themselves confronted with many problems and are consulting the Society. When the matter is within the Society's scope

they receive all possible assistance and in every instance they receive such advice as the Society and its solicitors are able to give. These problems include re-settlement in private practice, reinstatement in former employment, and recovery of houses and professional premises. Members who meet with any such difficulties are advised to consult the Secretary.

## **SOLICITORS' REPORT**

In the year 1945 we have dealt with 376 new cases, but it must be remembered that under the new method of numbering cases we do not now include cases that have been carried over from previous years.

During the war years a great diversity of matters has been dealt with on behalf of the members of the Society, and it is surprising, with so many members engaged on active service, or away from their pre-war work, what a large number of applications have been made to your Society throughout the war period.

Our work on the Society's behalf, in addition to the usual type of pre-war case, included Court Martial cases, special inquiries, and questions calling for advice on all manner of subjects, many arising from war-time legislation and war-time conditions.

Since the end of the war a number of problems has arisen in regard to reinstatement of members in their previous appointments, and in several cases successful appeals have been made to the Authorities on behalf of members, and in other cases complications which have arisen have been successfully dealt with.

Members should appreciate their rights in regard to reinstatement, and in all Services a very comprehensive pamphlet is obtainable which clearly sets out their position. In one case a member sought reinstatement by responding to an advertisement which was being made in regard to the post in which he was entitled to reinstatement. This led to complications and the matter is still pending.

It is perhaps to be expected after a long war, where a member or members of a partnership have been absent for a number of years, that partnership complications arise on the absentee's return to the practice. In some cases these are leading to dissolution and in others to a satisfactory solution of the difficulties. Your Society has advised in such cases, though the matters perhaps were not strictly within the scope of your Society's work. It should of course be understood by your members that, although your Society is always willing that we should give advice to members on such questions, it is not possible for your Society to conduct negotiations or support proceedings which may arise from such advice, except by arbitration.

In regard to the dental side, there have been a large number of cases which, though important, are not such as call for special comment in the summary of cases. Quite a number of disputes between

dental surgeon and patient have been capable of solution by reference to an expert and each party agreeing to abide by the expert's decision. This has proved a happy method of dealing privately and expeditiously with questions and without the occasion of publicity, and the more this procedure can be extended the better.

There have been some cases arising from the Dental Benefit Regulations and we feel very strongly that the scale fee for dentures allowed under the Regulations is quite inadequate and one can sympathise with dental surgeons who have quite wrongly departed from the Regulations. In so doing they cannot of course be defended, but the remedy is that representation should be made for an adequate increase in the scale of fees laid down.

There are in many districts local associations of dentists, and in certain cases the members of the association have collectively refused to abide by the authorised scale. Though we cannot advise the deliberate refusal or avoidance of the Regulations, if a number of associations throughout the country could combine to make representations to the Authorities good results might be obtained.

We feel that the advent of State Medical and Dental Services is going to have far-reaching results and that your Society and the other societies of a similar nature are likely to be called upon more than ever by their members for advice and guidance in the problems and perplexities which are bound to arise. Members of both professions are going to be exposed to far greater disciplinary risks.

Members of both professions remaining in the Services, and those who are not members, should realise that, by reason of their Service status, they are still exposed to action for negligence in regard to their work, quite apart from the many other matters which may arise calling for protection and advice. In many cases the Authorities will deal with a claim arising out of the act of a member, but in all such cases the member is asked to sign a form of authority which, amongst other things, authorises the Authority to admit liability on his behalf and to settle the matter. We strongly advise members not to sign so wide an authority but to refer the matter at the earliest moment to the Society.

Serving members should also realise that it is open to the Authorities to deal with any question of alleged negligence by Court Martial or Special Inquiry. Again, in all such cases, members should notify the Society at the earliest moment.

## **ASSISTANTS AND LOCUM TENENS**

While in some respects an Assistant is legally less liable than a Principal in that he works under the direction of the latter, he is certainly not immune from legal actions arising out of his professional work. Any practitioner is in law responsible for his professional actions and the fact that a Principal can be sued on account of the

actions of his Assistant does not decrease the Assistant's responsibility

A locum tenens, on the other hand, does not work under supervision. He replaces the practitioner for whom he is acting. Members are urged to ensure that their colleagues or associates are members either of the Society or of one of the other two recognised protection organisations, the Medical Defence Union and the Medical and Dental Defence Union of Scotland.

Once again it is necessary to remind practitioners that the Society cannot indemnify members against actions brought against them in respect of incidents arising out of the actions of a partner or assistant who is not a member of one of the recognised protection societies. It is imperative, therefore, that members should ensure that their professional associates are members of a recognised protection society, in order that they themselves should be fully protected.

It would appear that some practitioners hold the belief that if they join the Society it will undertake cases on their behalf which have arisen prior to their membership. This is not so and, save in exceptional circumstances, the Society cannot undertake cases arising out of incidents prior to a practitioner's membership.

## **NEWLY QUALIFIED PRACTITIONERS**

Newly qualified practitioners are strongly advised to take advantage of the special facilities afforded to them for joining the Society. The entrance fee is waived in the case of anyone joining within twelve months of registration. For this reason, as well as on account of their inexperience, the newly qualified would do well to apply for membership of the Society at the same time as they register.

## **PUBLIC HEALTH MEMBERS AND MEMBERS OF HOSPITAL STAFFS**

There appears to be an impression amongst certain practitioners who are in the whole-time employment of Local Authorities or Hospitals, that there is no need for them to be members of a protection society and that their employers will defend and indemnify them against actions which may be brought against them. This is a misapprehension, and those engaged in the Public Health Services have as much need of membership as any other class of practitioner. The usual defence of a Local Authority or Hospital is that, having employed a duly registered and qualified practitioner, it has fulfilled its obligations, and this defence usually holds good, so that the action continues against or is transferred to the individual practitioner. Apart, however, from legal actions, the Society is frequently called upon to advise and assist its members in connection with difficulties with their employing authorities.

## SERVICE PRACTITIONERS

There is an even greater misapprehension on the part of those in the Forces that, by reason of their Service, they are immune from legal actions. Cases are cited in the following pages in which the Society has assisted Service practitioners. The Manual of Law of each of the Services states quite clearly that an individual, by reason of his Service, is neither deprived of his civil rights nor debarred from his civil obligations, and those in the Services are liable to have actions brought against them on account of their professional work. Moreover, not infrequently complaints are made to higher authority regarding the work and alleged negligence, indifference or callousness of a Service practitioner, and in such cases many members of the Services have deemed it advisable or necessary to seek the assistance of the Society. The Society has assisted members in dealing with inquiries and complaints and has represented members at Courts Martial.

## MEMBERSHIP

Membership is open to any registered medical or dental practitioner. There is an entrance fee of ten shillings and the annual subscription is one pound. Subscriptions are payable annually on the anniversary of the date of election. Each member is notified when his subscription is due unless he has previously made arrangements, by means of a banker's order, for the payment of his subscription direct from his bank to the Society. Members are urged when possible to make use of bankers' orders for the payment of their subscriptions, as this ensures prompt payment and therefore continuity of membership, and saves them trouble. The Secretary will be pleased to supply any member with a banker's order form upon request. Those members who do not make use of bankers' orders are urged to remit their subscriptions promptly and thus save themselves and the office the necessity for reminders. When members allow their subscriptions to be more than one calendar month in arrear they cease to be eligible for any of the privileges of membership. Restoration involves full payment of arrears.

## RETIRED PRACTITIONERS

Members who have retired from practice may become life members in accordance with the following provisions:—

- (a) A member who has retired from practice and who has been a member of the Society for a period exceeding thirty years may be elected to honorary life membership of the Society.
- (b) A member who has retired from practice and who has been a member of the Society for a period of less than ten years may be admitted to life membership of the Society on payment of a compound subscription of three guineas.

- (c) A member who has retired from practice and who has been a member of the Society for a period of more than ten years but not exceeding fifteen years, may be admitted to life membership of the Society on payment of a compound subscription of two guineas.
- (d) A member who has retired from practice and who has been a member of the Society for a period of more than fifteen years but not exceeding thirty years may be admitted to life membership of the Society on payment of a compound subscription of one guinea.

The Council may, subject to the conditions contained in the Articles 16 and 17 of the Society, grant to any life member or to his or her personal representatives an indemnity in respect of actions arising out of the professional work of the member during his or her ordinary membership.

Any life member who resumes practice must of course immediately resume ordinary membership and pay the appropriate annual subscription. If and when he or she again retires life membership can be resumed without further payment.

No life member or his or her personal representative can be indemnified in respect of any professional work during his life membership, though exception may be made in the case of such casual attendances in the United Kingdom or Eire as may be required in accidents or similar instances of emergency.

## **BENEFITS OF MEMBERSHIP**

The scope of the Society is defined in the Memorandum and Articles of Association. Members who are in doubt as to whether a particular case comes within the purview of the Society are advised to consult the Secretary, who will be pleased to assist them on any point. In accordance with the Articles of Association the Council has complete discretion as to whether a particular case shall be undertaken on behalf of a member. When a case is undertaken the Society pays all the costs of its member, whether he be Plaintiff or Defendant, and whether he succeeds or not. In successful cases the Society may be awarded costs against the other side but it can never recover all of them and in most cases none are recovered. In unsuccessful cases the Society pays all the costs incurred in the defence of the member and all costs and damages which may be awarded to the other side up to an unlimited amount. The Society does not retain any part of the damages which it recovers when acting for a member but looks upon them as being the member's rightful property and therefore to be handed over to him. Even though the Society has incurred greater expense, the damages awarded are always handed to the member without deduction.

Ordinary membership only covers actions in Courts in Great Britain, Northern Ireland, the Channel Islands, the Isle of Man and Eire.

## OVERSEAS MEMBERSHIP

For the ordinary subscription of £1. 0s. 0d., members cannot be defended or indemnified, unless the case is within the jurisdiction of the Courts of the United Kingdom or Eire, but under the Overseas Indemnity Scheme, by payment of an additional subscription in accordance with the following scale, indemnity is provided in respect of cases within the jurisdiction of Colonial or Foreign Courts.

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| £6 0 0                                    | £10,000                         | £20,000                                      |
| £7 0 0                                    | £25,000                         | £50,000                                      |

The above subscriptions for Overseas Indemnity are in addition to the ordinary subscription of £1. 0s. 0d. which must be paid to secure membership.

The rules for the operation of the scheme provide that by agreement with Lloyd's Underwriters, whose organisation is world-wide, a local solicitor will be instructed when necessary and in cases of urgency the name of the solicitor will be cabled to the member so that action may be taken at once.

Full particulars of this additional benefit can be obtained from the Secretary.

## JOINT CO-ORDINATING COMMITTEE

A Standing Joint Committee, consisting of representatives of the Society and the Medical Defence Union Limited, has been in being for some years. It has dealt with actions involving members of both organisations and matters of mutual interest.

During the year representations were made by the Medical and Dental Defence Union of Scotland Limited and as a result the above Committee, consisting of representatives of the Society, the Medical Defence Union and the Medical and Dental Defence Union of Scotland, has been set up. The Committee is advisory and recommends to the respective Councils lines of action in appropriate cases. It is hoped that it will serve a useful purpose.

## GENERAL MEDICAL COUNCIL

For some time it has appeared to the Council that the Disciplinary Powers and Procedure of the General Medical Council were in need

of revision. Action had to be delayed because of the war, but during 1945 the Council again considered the matter. Through the Joint Co-ordinating Committee Counsel's opinion was taken, and after discussion between their representatives the three bodies represented reached general agreement.

The Council of the Society is making representations to the General Medical Council as follows:—

1. (a) that the General Medical Council be empowered and required to establish two distinct and separate Committees to be known as (i) The Penal Cases Committee and (ii) The Disciplinary Tribunal;  
(b) that a member of the Penal Cases Committee be not eligible to sit as a member of the Disciplinary Tribunal to hear a case that has already been before him as a member of the former Committee;  
(c) that the Disciplinary Tribunal sitting with a Legal Assessor consist of seven members drawn from a panel of twelve members elected by and from the Council of the General Medical Council, that its quorum consist of five members and that it be vested with the full disciplinary and judicial powers of the General Medical Council;
2. (a) that complaints received by the General Medical Council be examined in the first instance by the Penal Cases Committee to determine whether a *prima facie* case exists for reference to the Disciplinary Tribunal for determination;  
(b) that the General Medical Council be incompetent to present any case in which a Government Department or a Constituent Body is the complainant and that the burden of the presentation of any complaint be undertaken only when the Council is satisfied that justice would be denied in the absence of its intervention;
3. that the initial complaint in all cases, including information laid by a Government Department, be supported by an affidavit or affidavits setting out all material facts;
4. that a copy of the affidavit or affidavits be furnished to the Respondent with any request addressed to him to provide a reply and explanation;
5. that the Respondent be given not less than four weeks' notice of any Enquiry to be held by the Disciplinary Tribunal with discretionary power vesting in the President to extend the time on the receipt of an application to this effect;
6. that the attendance of witnesses and the production of documents before the Disciplinary Tribunal be enforceable by subpoena;

7. that all evidence before the Disciplinary Tribunal be given orally on oath save for good and sufficient reason except evidence as to character which may be given in writing;
8. that each party furnish to the other, not later than ten days before the hearing of the case a list of the documents on which they propose to rely;
9. that notice to produce and admit be not permitted;
10. that the Evidence Act, 1938, be not made applicable to the proceedings of the Disciplinary Tribunal;
11. that the parties be entitled to require the Disciplinary Tribunal to subpoena any deponent to an affidavit to give oral evidence;
12. that only those documents which are agreed by the parties and such others as are proved in evidence be placed before the Disciplinary Tribunal;
13. (a) that a summing up by the Legal Assessor be not required unless it is requested by the Disciplinary Tribunal or one of the parties when in the opinion of that party a point of law is involved;  
(b) that if and when the Legal Assessor sums up, he be obliged to do so in the presence of the parties;  
(c) that the Legal Assessor be a barrister or a solicitor experienced in the practice of the Courts of Common Law and of not less than ten years' standing;
14. that provision be made for a right of appeal to the High Court by the Respondent on points of law only;
15. that in the event of an appeal any order for erasure be suspended until after the disposal of the appeal, subject to the appeal being entered within seven days from the date of the order;
16. that the Disciplinary Tribunal be empowered (in addition to the present penalty of erasure) to administer other penalties short of erasure, viz., suspension for varying periods or censure of differing degrees;
17. that the Disciplinary Tribunal be empowered to award costs against a Complainant or Respondent and that machinery be established for taxing the costs;
18. that the General Medical Council be given the power, but not the exclusive power, to conduct prosecutions for infringements of the Medical Act, 1858;
19. that the words "professional misconduct" be substituted for the words "infamous conduct in a professional respect" and used in the same connection;
20. that the Rules of Procedure relating to Penal Enquiries be not subject to the approval of a Judicial Authority;

21. (a) that the appropriate provision of the Medical Act be amended to permit of the imposition of a maximum penalty of £500 and the alternative of a term of imprisonment for persons convicted of falsely holding themselves out to be registered medical practitioners;

(b) that addition be made to the present protected designations appearing in Section 40 of the Medical Act to embrace abbreviations of recognised medical qualifications, the courtesy title of "Dr." when associated with the healing art, and any other description in common use that is accepted by the public and the profession as indicating that the user is a registered medical practitioner.

## **COMMON POINTS ON WHICH ADVICE IS SOUGHT—CERTIFICATES**

Practitioners are so frequently asked to give certificates for one purpose or another that there is a grave danger of their being too readily given. Members are reminded that the General Medical Council has issued a Warning Notice upon this subject, and takes a serious view of incorrect as well as deliberately misleading certificates. It is therefore essential that the greatest care should be exercised and that practitioners should be able fully to justify any certificate given, whether it be regarding the necessity for a corset or regarding incapacity for work.

No information regarding a patient should be given to others save with the patient's clear, and preferably written, consent. The law as well as the profession regards the patient's privilege of professional secrecy as something to be jealously guarded and breaches of the privilege may involve a practitioner in serious difficulties.

Unless he is under a legal obligation or under contract to give a certificate without charge, a practitioner is entitled to charge any reasonable fee for a certificate.

## **NOTIFICATIONS TO PUBLIC AUTHORITIES**

A card giving full and concise information is in course of preparation and will be issued to members shortly.

## **PROFESSIONAL EVIDENCE**

### **Coroners' Inquests**

Medical and Dental practitioners may be called upon to give evidence in Coroners' Courts. A Coroner has power to summon a practitioner to attend and give evidence and power also to call upon any practitioner to perform a *post-mortem* and furnish a report or give evidence upon his findings. Sometimes Coroners ask practitioners

to make a report in writing in order to enable them to decide whether an inquest is necessary. A practitioner is not legally bound to give such a report, but he would be well advised to do so unless there is some definite reason why the information in his possession should only be given in Court. On occasions the practitioner may fear that he is going to be criticised at an inquest. Generally speaking, it is not desirable that members should be legally represented at inquests, for such representation of itself gives the impression that the practitioner has something to fear. Each case must, however, be considered in the light of the particular circumstances, and when desirable the Society always arranges for its members to be represented. Members are advised in all cases of doubt to consult the Secretary and give him full information.

## **General Courts**

As a preliminary to being called as witnesses, practitioners are frequently asked to furnish the solicitors of a patient with a report of his condition. In many instances the practitioner subsequently finds himself unable to obtain payment of his fee for such report. Members should, therefore, before making an examination and report in such cases, insist upon their fee being either paid beforehand or adequately guaranteed by the solicitors. They should also insist upon an agreement and suitable security for the payment of a proper fee for each day's attendance in Court, whether they are required to give evidence or not.

A practitioner must obey a subpœna summons in a criminal case. Similarly, in a civil case, if served with a subpœna accompanied by conduct money, he must attend Court.

The money paid with a subpœna is intended in the first place as conduct money, that is, money to cover the cost of attendance at the Court, and if the sum paid exceeds the amount due as conduct money the balance may count towards the fee payable for giving evidence.

No report should be given without the patient's full knowledge and consent, or in the case of a deceased person the knowledge and consent of the nearest relative or the representative of the deceased. If a practitioner is compelled by subpœna to attend Court and the consent of his patient to his giving evidence has not been obtained, he should, before giving evidence, inform the Judge and ask for his direction.

The Society's Secretary and Solicitors are always prepared to advise members in regard to any points concerning the giving of evidence.

## **FEES OF WITNESSES**

### **Coroners' Courts**

Fees of medical witnesses in Coroners' Courts are governed by Section 23 of the Coroners' (Amendment) Act, 1926, which provides

that (a) the fee payable to a legally qualified medical practitioner for attending to give evidence at an inquest when no *post-mortem* examination has been made by the practitioner shall be £1. 11s. 6d. for each day on which he is required to attend; (b) for making a *post-mortem* examination and reporting the result thereof to the Coroner without attending to give evidence, £2. 2s. 0d.; (c) for making a *post-mortem* examination (including the making of a report (if any) of the result thereof to the Coroner) and for attending to give evidence at the inquest £3. 3s. 0d. for the first day and £1. 11s. 6d. for each subsequent day on which the practitioner is required to attend.

The Act further lays down that no fee or remuneration shall be paid to a medical practitioner for the purpose of a *post-mortem* examination instituted without the previous direction or request of the Coroner, and that the Coroner may pay a higher fee to a specially qualified person (e.g., a pathologist) for conducting a *post-mortem* at his request.

Where an inquest is held at one and the same time on a number of persons the medical practitioner is entitled to a separate fee in respect of each body concerning which he gives evidence.

## **Criminal Courts**

These are governed by Regulations made under various Acts. It is sufficient to say that at present the fees to a practising member of the medical or dental professions for attending to give professional evidence are:—

- (a) In the town where he resides or carries on business, in one case only, not exceeding £1. 11s. 6d. per day;
- (b) Elsewhere than in the town or place in which he resides or practises, whether in one or in more cases, £3. 3s. 0d. per day.

It is also provided that the maximum shall not be allowed unless the witness is detained away from his home or place of business for at least four hours, and that if the time during which the witness is necessarily detained from his home or place of business be less than four hours he shall not receive more than one-half of the allowance that he would have received had he been detained for the whole day.

## **High Court and County Court**

A member of either the medical or dental professions attending as a witness of fact either with or without subpoena is entitled in the High Court to a fee of from £2. 2s. 0d. to £5. 5s. 0d. per diem. In the County Court members of the dental profession are entitled to from 15s. 0d. to £1. 10s. 0d. per diem, but medical men called to give evidence are treated as expert witnesses, not witnesses of fact, and allowances to them range from £3. 3s. 0d. to £8. 8s. 0d. per diem according to circumstances, plus in each case reasonable travelling and subsistence expenses. In the High Court in the majority of cases a fee of £5. 5s. 0d. per diem is allowed on taxation.

In all civil cases a member of the medical or dental professions, should he feel any anxiety as to his fees, is entitled to mention the fact to the Judge prior to his giving evidence.

### **Expert Witnesses**

These fees are a matter for private arrangement between the firm of solicitors, or their client, seeking the evidence, and the expert; and the latter is entitled to refuse to qualify to give evidence or to give his evidence until such fees are adequately secured or paid.

## **NATIONAL HEALTH INSURANCE**

Members frequently require advice and assistance in matters arising out of practice under the National Health Insurance Acts and Regulations. It is the duty of all persons who enter into a contract to make themselves familiar with what their obligations are under the contract, otherwise when difficulties arise they tend to regard it as all "a lot of red tape." Members are urged to read the Regulations and get clear in their minds what they have contracted to do and how they have contracted to do it. Prophylaxis is much simpler than treatment—though, alas, not always completely successful.

Difficulties arise under these Acts over certificates, excessive or expensive prescribing, charging of fees to insured persons, complaints by Approved Societies and, of course, complaints by patients. In the case of medical practitioners complaints are dealt with in the first instance by the local Medical Service Sub-committee, and when a copy of the complaint is sent to a practitioner it is most important that he should reply to the Insurance Committee. In his reply the practitioner should first set out the facts and then deal more specifically with the allegations. So far as possible it is best to avoid making counter accusations and it is useless merely to express general condemnation of the complaint. In the case of a dental practitioner the complaint is heard by a Referee appointed by the Dental Benefit Council, who, if he is not himself a dentist, has a dental assessor sitting with him.

Representation at hearings by the Medical Service Sub-committee (or by a Referee in dental cases) is not permitted, but appeals can be made against the decisions thereof. At the hearing of the appeal representation is permitted and the Society has conducted successfully many appeals on behalf of members.

The Secretary is always ready to advise members at all stages in these cases, and members are urged to consult the Society as soon as difficulties arise, so as to obtain guidance in the initial stages.

## **RENT RESTRICTION ACTS AND EMERGENCY POWERS ACT**

Practitioners, and particularly practitioners returning from service with H.M. Forces, are finding difficulty in obtaining possession of

premises which they own or leased prior to their enlistment or removal. These premises are frequently essential to the conduct of their practice. Nevertheless, re-possession is governed and restricted by the above Acts. The Rent Restriction Acts broadly cover all houses whose rateable value does not exceed £100. 0s. 0d. in the London Metropolitan area or £75. 0s. 0d. outside this area, and any person who is in occupation of unfurnished premises which are governed by the Acts cannot be evicted, except by order of the court, even though he may have agreed in writing to get out when the practitioner wanted the premises back again. The only way in which the practitioner can obtain re-possession is if he can show that suitable alternative accommodation is available for the occupants and that he needs the premises for himself, for a near relative or for an employee.

It is outside the scope of the Society to undertake these cases on behalf of a member, although he has always the benefit of the advice of the Society's staff and solicitors. The Council has, however, decided that especially in the case of ex-Service members the Society should undertake these cases and take such action as is possible to regain possession. In many cases which have been undertaken a successful result has followed the action of the Society.

## **INTERESTING CASES**

**The absence of records constitutes a grave handicap to the Society in its defence of a member and the importance of proper notes cannot be exaggerated.**

## **NEGLIGENCE**

The majority of cases undertaken by the Society involve an imputation of this kind. Negligence must, of course, be proven in the Courts by a complainant. It is not sufficient for a patient to show that the member's diagnosis or treatment was wrong. If the practitioner has exercised reasonable care and skill he cannot be held to have been negligent, even though some person of greater skill and knowledge might have prescribed different treatment or acted in a different way. It is therefore necessary, if a Plaintiff is to succeed in an action, for him to convince the Court that the particular practitioner ought to have diagnosed or treated the case differently, that proper professional care and skill were not exercised or that the practitioner failed to investigate the case as thoroughly as it merited. The commonest ways in which members lay themselves open to such charges are by failing to keep adequate records and failing to obtain X-ray reports in cases of fracture or possible fracture.

### **Burn by Hot-water Bottle**

A child, aged three years, who had been operated on in hospital, sustained a burn on the foot from a hot-water bottle. The accident

happened on the day following a heavy air-raid, when the hospital was full of air-raid casualties and the staff over-taxed with work, and it was, in consequence, quite impossible to affix the responsibility. Proceedings were commenced against the Medical Superintendent and the Governors of the Hospital, and heavy damages were claimed. It was alleged that the child had sustained serious injury to the foot with some deformity. Because of the difficulty of placing responsibility it was decided to attempt to settle the case for a reasonable figure, but this was not successful and the case proceeded to trial, where the claim was dismissed with costs.

### **Fracture of Femur**

A member was in attendance upon a patient suffering from a fracture of the right femur following a motor accident. The left leg was about two inches shorter than the right, due to infantile paralysis. The fracture was reduced and there was found to be no shortening. Subsequently it was decided to get the patient up, and whilst he was standing at the edge of the bed preparatory to being handed crutches and being assisted to walk for the first time, he fell and re-fractured his leg. A claim was made against the member on the ground of negligence, in that he had allowed the patient to attempt to walk with only one crutch. Actually the patient had moved before the member had intended him to do so and whilst the member was out of the room fetching a nurse to assist. Although the Council was satisfied that such an accident to a patient in the early stages of getting up is always possible, it was decided to explore a settlement. Ultimately negotiations were successful and a signed withdrawal of all allegations of negligence was obtained.

### **Swab Retained in Wound**

A member performed an exploratory laparotomy on a patient and removed the appendix. Owing to the abnormal obesity of the patient closure of the wound was very difficult and it was found necessary to use additional swabs. When the patient was discharged from hospital she still had a small sinus. Five months later she was re-admitted to hospital because the sinus was discharging, but no surgical intervention was deemed necessary. Three months later the patient's doctor found one inch of swab projecting from the sinus and this he removed. All the swabs had been counted and the Theatre Sister had reported the swab count as correct. A claim for compensation was made and after careful consideration by the Council the Society's solicitors were instructed to explore a settlement. Negotiations were not successful and eventually a sum was paid into Court with a denial of liability. The claim was not pursued and the action remained in abeyance for a period of two years. An approach was made by the patient's solicitors asking for a further sum in respect of costs. It was agreed to pay taxed costs in addition to the amount paid into Court. This was accepted and an Order staying the proceedings was made.

## **Instrument Left in Abdomen**

A claim was made by a patient against a member who had performed hysterectomy eight years previously. There had been no complaint of pain in the abdomen during the intervening period. In 1943, however, she consulted her doctor and X-ray examination revealed the presence of a large instrument, which appeared to be an intestinal depressor, in the abdomen. The Society undertook the case and advised its member in the negotiations for a settlement, and this was effected for a reasonable sum plus the costs of the operation for the removal of the instrument.

## **Tetanus**

A boy, aged twelve years, was taken to a member's surgery with a history that, whilst playing amongst some bushes, a splinter penetrated his right thigh. On examination the member found a small wound from which he managed to extract a small piece of splinter and then advised that the boy should be taken to hospital. An antiseptic dressing was applied and a letter was given to the mother, for her to take to hospital, stating that the wound had been caused by a splinter from a bush. The patient was seen by the Casualty Officer and a further portion of splinter removed. Three days later he was admitted to another hospital, where he died from tetanus. An inquest was held and subsequently proceedings were commenced against the general practitioner and the Casualty Officer, both of whom were members of the Society, alleging negligence, on the score that anti-tetanic serum should have been given. Liability was denied and the case proceeded to trial, where judgment was given for the Defendants with costs.

## **Swab in Antrum**

A member was informed by a patient that, following an antral operation by him a year previously, two swabs had been removed by her doctor. The patient had been referred to the member by her doctor for consultation and was found to be suffering from a chondromatous tumour. An exploratory operation was performed but it was found impossible to remove the growth. Dressings of plain gauze had been used and some had been placed in the antral cavity. These were said to have been removed forty-eight hours after the operation. The member could not remember whether he had himself removed all the dressings in this case, as it is sometimes his custom to leave them to be removed by his House Surgeon. The case was a difficult and unusual one, and when the patient was discharged from hospital he had impressed upon her that he wished to see her again in two months' time. A claim for damages was made and the Society's solicitors were instructed to negotiate a settlement and this was effected satisfactorily.

## **Operation on Wrong Breast**

Proceedings were brought against a member claiming damages, the patient alleging that he had operated on the wrong breast. The cir-

cumstances were curious, in that though a cyst had been found in the left breast, and it was intended to operate on that breast, the cyst could not be found on examination after the patient had been anaesthetised. On examination of the right breast, however, a cyst was found, and as the object of the operation was diagnostic the member operated on the right breast, feeling that it was in the best interests of the patient to do so. The operation was successful and the subsequent pathological tests were satisfactory. Eminent expert evidence in support of the member was given on the hearing of the action, when it transpired that the patient had subsequently, by another surgeon, had a similar operation on the other breast with similar results. It was found by the Judge that the member had no authority to operate on the right breast, and, in spite of the evidence, both of the member and the supporting experts, the Judge undoubtedly formed the opinion that a mistake had been made and the action was lost, £200 damages being awarded.

### **Fracture of Femur**

A member was sued by a patient and by her son for damages in respect of the alleged negligent treatment of a fracture of the femur following a fall. The patient's claim was for damages for pain and suffering, and the son's for expenses to which he had been put on his mother's behalf. The patient was old, infirm and obese, and a fracture of the arm was diagnosed. Quite apart from any question of fracture of the femur, her condition following the fall was very serious and the member's first concern was her general well-being and the avoidance of pneumonia or other complications. There were difficulties in obtaining X-rays, but nevertheless the member's treatment was influenced by the possibility of a fracture of the femur, as he had this in mind. A fracture was subsequently discovered, and it was because of this that the proceedings were brought. The member's contentions were upheld by the Court, the Judge recognising that by his skill and care the practitioner had probably saved the patient's life. Judgment was given in the member's favour.

### **Injection of an Overdose**

A member serving in the E.M.S. was sued by the personal representatives of an Army patient for negligence leading to his death. The member had prescribed injection of a certain drug in ampoule form. Supplies to the hospital were ordered by the hospital authorities and on all previous occasions had been delivered in ampoules containing a liquid. On this occasion the ampoules contained crystals and were of a strength far greater than that in the previous ampoules. The nurse, whose duty it was to administer the injection, dissolved the crystals and gave the injection from the resulting solution, and the patient died. On the hearing of the case the member was completely vindicated and Judgment was given in his favour, it being held that the manufacturers had given insufficient indication of the variation in the strength of ampoules supplied.

## **Removal of Uvula at Operation for Removal of Tonsils and Adenoids**

A member was sued by the mother of a child, it being alleged that during an operation for the removal of the child's tonsils he had also negligently removed the uvula. The practitioner had operated by the guillotine method, a method in which he was well-skilled and experienced. Following the operation the child had developed a rash and in consequence was transferred to an isolation hospital. The member denied that he had removed the uvula and contended that the loss or damage to the uvula was as a result of infection which had caused sloughing. The defence was extremely difficult, because in the period intervening between the operation and the action coming for trial, the member died, and thus his evidence was not available. Expert evidence was called at the trial by both sides, a further misfortune being that the expert called in defence of the member was taken ill during the trial. Actually by the time the case was heard the apparent damage, so far as the patient's voice was concerned, was little, and it was on the score of altered voice and speech that the original claim had been made. Judgment was given in favour of the Plaintiff and damages were awarded against the member. These and the costs both of defending the member and of the other side were, of course, borne by the Society.

Some members may be surprised that an action can be brought against the relatives of a deceased practitioner on the score of his acts. This is quite possible under the Law, the action being brought against the practitioner's estate. In these cases the Society protects the interests of its members who are deceased just as it protects the interests of those who are alive.

## **Infringement of E.M.S. Regulation**

A member attached to an E.M.S. Hospital attended a boy for a fracture and other injuries sustained during an air raid. The boy and his family were well known to the member and he elected to treat the patient in the hospital to which he was attached. Unfortunately he overlooked the fact that the Ministry of Health Circular on the question of fracture cases required that the patient should be transferred to a special hospital, but in any event he did not consider that the boy was fit to be moved. Despite treatment the wound turned septic. A Medical Inspector of the Ministry of Health, on visiting the hospital, directed that the boy should be moved to the special fracture hospital. This was done and a major operation performed, but the boy died. An action was then commenced against the member, alleging that he had been negligent in his treatment of the fracture and had failed to comply with the Ministry of Health Regulations. In spite of the member's evidence, and that of experts called in support of his case, damages were awarded in favour of the personal representatives of the deceased, for special damage and loss of expectation of life.

## **Swab Left in Nose**

It was alleged against a member that he was negligent in having left a swab in a patient's nose following an operation. Prior to, and at the time of the hearing, the member was so ill that he was unable to give evidence, but it was proved to the satisfaction of the Court by his partner and a nurse in attendance on the case that the member had never used swabs of the nature of that produced by the Plaintiff, and the Court was satisfied with this evidence and Judgment was given in the member's favour.

## **Scald of Hand**

A member was sued by the father of a young child on his own behalf and as next friend of the child, claiming damages for injuries sustained by the child and expenses incurred by himself as a result of the member's negligence. The child was brought to the member with a septic thumb and in treating the condition the member asked his surgery attendant to bring in a jug of hot water. Unfortunately, without testing it, the member plunged the child's hand into the water, which was then found to be almost boiling. As a result, the child's hand was severely scalded and deformed. Efforts to settle the case were unsuccessful and it was decided to contest the action on the issue of damages only. A sum of money was paid into Court, but this was not accepted by the Plaintiffs. On the hearing of the case damages slightly in excess of the amount paid into Court were awarded to the child.

## **Obstetric Case**

A member was sued by a patient whom she (the member) had attended in her confinement, for damages for the member's alleged negligence in not diagnosing a breech presentation and in regard to after-treatment. Delivery had been uneventful, except for a slight perineal tear; the mother made a complete recovery, and the child was perfectly normal. Eminent expert evidence was called in support of the member's defence that the non-diagnosis of a breech presentation is not negligence and as to the member's after-treatment, and Judgment was given in favour of the member.

## **Workmen's Compensation**

A member was sued by a patient, who, in the same proceedings, sued her Solicitor for damages for negligence, the allegation being that, as a result of her Solicitor's advice and a report given as to her condition by the member, she had settled her claim under the Workmen's Compensation Act in respect of certain leg injuries she had sustained for a far less sum than she was entitled to owing to further trouble which subsequently developed, necessitating the amputation of her leg. On behalf of the member it was denied that he had given an inaccurate or misleading report. Eventually the action was settled by the Solicitor for a small sum and Judgment was entered in favour of the member, costs being waived.

## Operation Against Patient's Wish

Proceedings were commenced against a member in the County Court by a patient, claiming £200 damages on the ground that eight years previously, when she had consulted him in regard to a gland in her neck, he had operated upon her against her wish and, as a result, she was disabled for life. After the lapse of time the member had very little recollection of the case, but on reference to his records he found that he had drained an abscess for the patient about that time, but there was no indication that there were any untoward results afterwards or that he had ever seen the patient again. The case was undertaken on behalf of the member and the Society's solicitors were instructed. Judgment was given for the member with costs, but owing to the financial position of the patient it was found impossible to recover them. Subsequently the patient entered an Appeal. The proceedings were costing her nothing, although they were causing the member a considerable amount of annoyance and waste of time, and had it not been for the Society he would have been put to the expense of his defence. The Appeal was dismissed with costs and again it was found impossible to recover them.

## Death Under Anæsthesia

A patient was admitted to hospital following an accident whilst driving an Army lorry and was found to be suffering from a compound fracture of the tibia and fibula. He was examined by the House Surgeon and it was decided to administer an anæsthetic so that the fracture could be reduced. The House Surgeon administered the anæsthetic and during induction the patient started to vomit. The anæsthetic was stopped and later continued with nitrous oxide, oxygen and chloroform vapour. The operation for reduction of the fracture was commenced. The anæsthetist then left and the administration was taken over by another doctor. At that time the patient's colour was good and his condition appeared satisfactory. The House Surgeon stated that he informed his deputy of the previous vomiting. The patient, however, died under the anæsthetic and the *post-mortem* revealed the cause of death as asphyxia due to the inhalation of vomited food. The widow commenced proceedings, claiming damages against the driver of the car causing the accident and against the House Surgeon for negligence in the administration of the anæsthetic. The Society undertook the case on behalf of the member and liability was denied. Subsequently the case was settled out of Court by the first Defendant, the Society contributing a sum towards the amount paid in settlement.

## Volkmann's Ischæmic Contracture

A member who was acting as a locum saw a child at the surgery and diagnosed a greenstick fracture of the left forearm. There was

some angulation and the practitioner sent the patient to the local hospital, where he later straightened the arm under anæsthesia and applied a plaster from above the elbow to the fingers. No padding was included. He did not see the patient after recovery from the anæsthetic. The following day, as the child was in pain, he was taken to see the member, who did not consider it necessary to make any adjustment. That evening the child was taken to the hospital, where the House Surgeon loosened the plaster at the base of the fingers. Two days later the member removed the plaster all round the hand, which by this time was blue and swollen. The patient was brought several times subsequently to see the practitioner on account of pain, but only on the eleventh day did he slit the plaster along its whole length. This at once relieved the pain. The principal returned at this juncture and he sent the patient to a London Hospital. The patient developed a Volkmann's Ischæmic Contracture. The Society had the child examined by an expert, and in view of his opinion it was decided to explore a settlement, and this was finally effected for £1,000. 0s. 0d. and costs.

### **Injection of Uroselectan Outside Vein**

A patient attended hospital as an out-patient on account of renal trouble. It was decided to administer Uroselectan, and the House Physician administered the drug intravenously. An attempt was first made on the left arm, but as he was not sure of being in the vein, the practitioner changed to the right arm. After the commencement of the injection the patient moved and an indurated swelling appeared in the ante-cubital space. Despite immediate treatment the patient suffered damage to the median nerve. Proceedings were commenced against the House Physician and the Society undertook the case on his behalf. The opinion of an expert neurologist was obtained and the case was finally settled for £450. 0s. 0d.

### **Failure to Diagnose Diphtheria**

A practitioner was called to see a child aged eleven years who was suffering from a sore throat. He examined her, using a torch and a spoon, and found red and inflamed tonsils. He could see no membrane. He diagnosed tonsillitis and prescribed Salicylates. He called again two days later. The child had a temperature of 102 degrees and the throat condition was no better. He altered the treatment to Sulphonamide tablets, a gargle and a cough mixture. He did not on either occasion take a swab. The patient's mother expressed the fear that it might be diphtheria—a fear she had expressed on the occasion of every sore throat contracted by members of her family—but the member could find no clinical evidence of this. Two days later he again called. This time he found that pus was exuding from the tonsils and that there was some nasal discharge. The temperature had dropped and again he did not think it necessary to take a swab. When he

called the following day there was some sloughing. He attended several times subsequently, until on the twelfth day of the illness he was sent for urgently and on arrival found the child very collapsed. He then took a swab and administered anti-diphtheritic serum. The child subsequently died. The parents instructed solicitors and the member consulted the Society. It was decided to settle this case and this was finally effected for £450. 0s. 0d. plus costs.

### **Teeth Displaced by Gag**

A child, aged 5½ years, was being operated upon for removal of tonsils by the guillotine method. Induction (chloroform and ether) of anæsthesia was normal and a Doyens gag was placed in position. During the operation the gag slipped and was replaced by the surgeon. It slipped again twice and was then replaced by a larger one of similar type. It was then seen that teeth had been displaced by the efforts at replacement of the gag. Altogether seven teeth, including two permanent teeth, were dislodged. There was great difficulty in assessing whether it was the anæsthetist or the surgeon who displaced the teeth, and in fact their statements were at considerable variance. It was decided to explore a settlement and this was finally effected for £85 0s. 0d. plus costs.

### **Undiagnosed Fracture of Ankle—No Notes, No X-rays**

A doctor was called to see a patient, who gave a history of having fallen the previous evening. She had been taken to a Cottage Hospital, where a splint had been applied. The practitioner did not disturb the splint. On the eighth day he examined the patient again and considered everything satisfactory. He visited regularly over a period of five weeks, during which, owing to her being very stout, the patient was kept in bed. After five weeks she was still complaining of pain in the ankle and it was decided to send her to hospital for X-ray examination. This revealed fracture of the tibia and fibula not in good position. The patient had to undergo operative treatment and the ankle had to be fixed.

The patient commenced legal proceedings and alleged that the practitioner had been negligent, in that he had failed to diagnose a fracture, had failed to treat the case properly and had advised against an X-ray. The latter the practitioner denied, but the absence of any notes or records made by him, his failure to contact the Cottage Hospital where the case was first treated, and the long delay in getting an X-ray constituted grave difficulties in the way of his defence.

The Society obtained the report of an expert orthopædic surgeon, and as a result it was decided to explore a settlement. This was finally effected for £800. 0s. 0d. plus costs

## **INDUSTRIAL MEDICAL OFFICER**

A member who was a medical officer to a big industrial concern directed that the Works nurse should put certain drops in a patient's ear. The Works nurse by mistake used the wrong preparation and this resulted in damage. It was alleged that the member was responsible and had been negligent, and proceedings were instituted against him and the Company. These were defended on behalf of the member, and eventually settled by the Company before the hearing, the member's costs being paid.

## **MENTAL TREATMENT ACT**

Two applications were dealt with on behalf of members under the Mental Treatment Act, in each case the patient seeking for leave to commence proceedings for damages against the member. In both cases the application for leave was successfully resisted.

These cases are always a source of considerable irritation to the practitioner concerned. There often appears to be not the slightest cause for the action, but, despite this, those bringing them often go to great pains and to great lengths in order to bring their actions, mostly on the grounds of wrongful certification. Seldom in these cases is it possible to obtain any redress on behalf of the member for the annoyance and the time involved, and in fact it is usually impossible to obtain the costs in which the Society is involved, although the Society is legally entitled to such costs on the score of the action failing.

## **CANVASSING**

A member, after purchasing a practice, found a colleague who, in the absence of the former practitioner had acted as a locum tenens, was canvassing the patients of the practice with whom he had become acquainted by reason of his locum tenens, and had in fact opened a surgery in the next house. Complaint was made on behalf of the member to the General Medical Council, resulting in the other practitioner being struck off the Register.

## **ASSAULT**

A dental member who employed a nurse was aroused early one morning by the nurse's father and mother knocking at his door and shouting. On opening the door the man and his wife accused the member of misconduct with their daughter, and, without any warning, the man attacked the member with a milk bottle, causing him severe head injuries. Police Court proceedings for assault were taken on behalf of the member and resulted in a fine being inflicted.

## SLANDER AND LIBEL

(a) Very serious charges were made by a matron of a hospital against a member, alleging that he had been performing illegal operations. A slander action was brought against the matron, resulting in the member being completely vindicated. Damages were waived by the member, and the matron, through her Counsel, gave a complete withdrawal and apology. The Judge expressed the view that the matron's statements were "a pack of lies." A sum representing about half the taxed costs was recovered.

(b) A member was sued by a nurse for slander, on the ground that he had made derogatory remarks concerning the nurse to the patient employing her. The member denied that he had used the words complained of, though there was no doubt that he had used words which were indiscreet and capable of misconstruction. In all the circumstances it was felt that it was better in the member's interests to settle the proceedings, and this was done by an apology and a small payment to the complainant.

(c) Proceedings were instituted on behalf of a member against the husband of a patient claiming damages for libel contained in a letter written by the husband to the member. The "publication" to a third person was to the person to whom the letter was dictated and who typed it and who signed it. The husband carried on the business of a Nursing Association and through this Association he arranged for a midwife to attend his wife in her confinement. The wife also asked the member to attend her, and this in fact he did, subsequently rendering his account. The husband's letter, which purported to come from the Nursing Association, made allegations against the practitioner to the effect that his attendance was neither asked for nor was it necessary, that his instruments were dirty and unusable, and that he exhibited gross lack of professional conduct. On a Writ being issued by the Society's solicitors acting on behalf of the member, and duly served, the husband's solicitors made an approach. The matter was finally disposed of by the husband withdrawing and apologising for the letter which he had written, paying the member's account and the costs incurred.

## DENTAL CASES

### Injection of Wrong Substance

A member intending to administer a local anæsthetic for the purpose of the extraction of teeth, by mistake injected oil of cloves. Although he was aware of the mistake he did not inform the patient. She returned next day with a swollen face and was advised by the member to keep the area clean and use frequent mouth washes. She was also advised to return every day for treatment, but did not do so. Subsequently, as sloughing continued, she was referred to a hospital for

treatment, but the member did not inform the hospital of the error in the injection. The patient lost two teeth and there was some necrosis of the bone. A claim was made and the Society undertook the case, but advised the member that he had considerably jeopardised his defence by not informing the hospital of the facts. Eventually a settlement was effected.

## **Tooth in Lung**

A patient attended for the removal of the  $\sqrt{56}$  under a nasal anæsthetic, which was administered by her doctor. A mouth prop was inserted on the right side and a large throat pack was placed in position by the dental surgeon. The molar was then removed but during the course of the extraction of the premolar the crown broke off. An attempt was then made to remove the root and on pressure being applied it literally shot out of the socket and the dental surgeon neither saw it nor did he hear it fall on the ground. He explored the floor of the mouth without result and the pack was removed. During the whole of the anæsthetic the patient's breathing was normal, there being an entire absence of any indication that a foreign body had passed into the respiratory passages. Arrangements were made for the patient to return later in the evening for further examination. When she returned the only complaint was that she had a slight soreness of the throat on the right side. The dental surgeon referred the case to hospital for X-ray examination, which revealed the root in the right bronchus. Unsuccessful attempts were made to remove the portion of root by bronchoscopy and later an operation was performed and a small portion of the fringe of the right lower lobe containing the root was removed. A claim for compensation, alleging negligence, was made, and the Society's solicitors were instructed to deny liability. The case proceeded to trial, when Judgment was given in favour of the member with costs.

## **Too Well Fitting Denture**

A dental practitioner arranged to make an upper denture for a patient. The upper jaw was still very bulbous, so much so that the practitioner took X-rays for possible  $\frac{8}{8}$ . However, these were found to be missing and the dentist proceeded to take impressions. After some difficulties, owing to the contour of the mouth, the denture was finally constructed in Kalodent "222" and inserted in the mouth. The patient was warned that it might be sore or uncomfortable for a day or two and was advised not to exert too much pressure on it by eating anything hard for a few days. Five days later the patient attended and as her mouth had become very sore asked the dentist to remove the denture, as she herself was unable to get it out. The dentist found that the denture was firmly fixed. Attempts at removal proved fruitless, partly owing to some œdema but mostly because the patient was very excited and disturbed. The patient was finally taken by her

husband to a dental hospital, where the denture was removed under a general anæsthetic. The patient and her husband refused to pay the dentist's fee and the Society was consulted. It was decided that attack was the best means of defence in this case—the other side was talking about an action for negligence—and a Writ was issued against the patient and her husband. The case went for trial and the defence entered imputed negligence on several counts, including negligence in preparing the denture and negligence in failing to get it out and to give an anæsthetic for that purpose. The Judge found for the Defendants but made it clear that he did so only on the score of failure to take adequate steps to remove the denture.

## **Dislocation of Jaw**

A lady visited a member and requested that he should then and there extract some teeth under gas. He refused but arranged for her to attend at a later date, properly prepared, and for an anæsthetist to be present. A general anæsthetic was given and the extractions successfully performed without incident. A Mason's gag was used on each side. Before commencing the extractions the dentist noticed that the patient had a very open bite and he thought he remarked on this to the anæsthetist. A few days after the operation the lady telephoned to say that she had had some hæmorrhage and that she would be calling. She did not do so until a week after the operation and then healing appeared to be normal and no complaint was made. Seventeen days later she attended again, complaining of pain in the left temporo-mandibular region, but the dentist could detect nothing abnormal and she could close her mouth. There was in fact, in his opinion, nothing to suggest a subluxation. A month later the patient called again and stated that, while consulting him about her child, her doctor had remarked on her jaw and had given her a note to take to a hospital. She attended and was seen by the Honorary Dental Surgeon, who carried out some manipulative treatment under an anæsthetic and, following this, had ordered her to wear a bandage on her jaw for five to six weeks. She asked the member to compensate her for her loss of wages and out-of-pocket expenses. He refused and reported the facts to the Society. The Society obtained expert opinion and as a result negligence and liability were denied. The case went for trial but, despite expert evidence on the member's behalf, the Plaintiff was awarded £90. 0s. 0d. damages and costs.

Most medical practitioners and many dentists will be surprised at the suggestion that dislocation of the jaw or, rather, subluxation of the mandibular joint, can be so little apparent, but nevertheless this is so, and temporary subluxation is probably not so uncommon as is generally supposed.

## **Tooth in Lung**

A patient consulted a dentist, who advised complete clearance of the mouth owing to the presence of pyorrhœa. One tooth was ex-

tracted under local anæsthesia and the patient then decided to have the remainder out under a general anæsthetic. Twenty-nine teeth were extracted under general anæsthesia, a throat pack being placed in the pharynx. The extractions were performed without incident, there was no coughing during the anæsthetic and, in fact, everything appeared normal. The dentist did not count the teeth after extraction.

Six months later dentures were fitted. Three months later the patient called and said that he had been having chest trouble, had been referred to Hospital and that an X-ray had revealed the presence of a tooth in the lung. He said that he had suffered financial loss through being off work and asked the dentist if he could help him. The dentist, as an act of sympathy, gave the patient £2. 0s. 0d., who went on his way apparently satisfied. However, two and a half years after the original consultation, the patient died. A *post-mortem* was performed and the cause of death was stated to be cerebral abscess, which was due to bronchiectasis set up by the presence of a tooth in the lung. The widow commenced proceedings. It was decided that the case was one which must be settled, particularly in view of the payment of £2. 0s. 0d. already made by the member, thus admitting liability, and this was finally effected for £750. 0s. 0d. plus costs.

## SERVICE CASES

1. A Medical Officer in charge of a large Unit arranged for the attendance of personnel at the Medical Inspection Room for (a) T.A.B. Inoculation; (b) Intravenous therapy for venereal disease. Unfortunately, one man who should have attended for T.A.B. Inoculation got into the wrong parade and as a result received intravenous arsenical therapy. The mistake was soon discovered and the patient was informed of the error. The member consulted the Secretary early and as a result of a personal discussion between the member and the patient the matter was satisfactorily disposed of.

2. A member serving in the R.A.M.C., who had served in the War of 1914-18 and afterwards went to India, contracted malaria. He subsequently had frequent recurrences of malaria and on one occasion he knew that he was going to have an attack. He was summoned to appear before a Court Martial, the charge against him being that he was drunk whilst on Active Service. He applied to the Society for assistance and through its solicitors the Society arranged for Counsel to represent him at the Court Martial. He was, however, found guilty. Subsequently he was summoned to appear before the General Medical Council. Again the Society arranged for his representation. The General Medical Council, after going into the facts of the case, did not think fit to direct the Registrar to erase his name from the Register.

3. A soldier was admitted to a Military Hospital and the officer in charge of the Surgical Division was asked to see him. The patient complained of severe abdominal pain and the member decided, owing

to the rigidity of the abdominal wall, to make an examination under regional block anæsthesia. He asked for one-half per cent. Novocain and Adrenalin. The Senior Theatre Sister handed to him a loaded 20 c.c. syringe, the contents of which he injected and then handed it back for re-fill. About half-way through the second injection the patient vomited and then collapsed. Oxygen was administered and every attempt was made to resuscitate the patient, but he died nine hours later. The surgeon suspected that the cause might be the local anæsthetic and he enquired of the Sister how she had prepared this. She told him that she had mixed equal parts Adrenalin and one-half per cent. Novocain, which meant, of course, that the patient had received a large overdose of Adrenalin. An action was commenced by the patient's relatives and the Society represented the member's interests. The case was finally settled out of Court.

## FINANCIAL REPORT

The Statement of Accounts for the year ended 31st December, 1945, appears on pages 35 and 36.

The Council has pleasure in reporting again on the satisfactory position of the Society's finances. Ample reserves are essential to meet any eventuality which might arise in the protection and safeguarding of members' interests, and it must be gratifying to members to know the financial position is so strong.

In 1940, owing to the uncertain conditions then ruling, a possible fall in the value of investments was provided for by the creation of an Investment Reserve of £7,000. The Market Value of Investments is now very much greater than their cost, i.e., the value at which they are shown in the accounts, and so, as the need for this Reserve no longer exists, the amount of £7,000 has been transferred to Accumulated Funds. During the year under review the Loan, free of interest, to H.M. Government, of £15,500, was repaid, and Treasury Bills for £10,000 matured at the end of December. This accounts for the large sum on deposit at the Bank. Since then the greater part of this money has been invested. The Investment position is strong and many of the holdings are worth considerably more than their book value.

## Expenditure

The Expenditure for 1945 amounted to £15,673. 0s. 2d., a decrease of £2,047. 6s. 1d. on the previous year. Since 1939, Expenditure has been fairly constant, in spite of a large increase in membership and the general tendency towards increased labour and administrative costs. Undoubtedly Expenditure will be greater, and that already incurred for 1946 shows a marked increase on last year.

## Income

The Income for 1945 amounted to £21,651. 11s. 4d., an increase of £871. 10s. 10d. on the previous year. Income from Members was more by £764. 0s. 10d., and from Investments by £110. 8s. 5d.

## Balance Sheet

The Accumulated Funds at the 31st December, 1945, amounted to £112,563. 2s. 5d., an increase of £13,012. 12s. 3d., which represents the surplus on the year's working of £5,978 11s. 2d., the transfer from Investment Reserve of £7,000 and the Net Profit on Realisation of Investments during the year of £34. 1s. 1d.

The amount of the Accumulated Funds averages £5 10s. 6d. per member.

## Financial Resources

The Financial Resources of the Society, available for the protection of the professional interests of its members, based on the audited Balance Sheet as on the 31st December, 1945, amounted to £143,122. 12s. 5d. (This figure includes the accumulated funds and the amounts of the member's liability in respect of a call, which may be made, not exceeding Ten Shillings per member in any one year and a call of One Pound in the improbable event of the winding-up of the Society.) In addition, the Society is re-insured with Lloyd's Underwriters, in respect of any sum in excess of £8,750, approximately, and up to an unlimited amount, which the Society may have to pay by way of adverse costs and damages in any one year.

## TERMS OF MEMBERSHIP

|                                                                                  | £ | s. | d. |
|----------------------------------------------------------------------------------|---|----|----|
| Annual Subscription .. .. .                                                      | 1 | 0  | 0  |
| Entrance Fee (Remitted to those joining within one year<br>of registration) .. . | 0 | 10 | 0  |
| Additional Annual Subscriptions for Overseas Indemnity, see page 12.             |   |    |    |

Cf

Page Thirty-five

## BALANCE SHEET, 31st December, 1945.

£113,919 13 9

W. M. MOLLISON, Treasurer.

Chartered Accountants), Auditors,

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