4. *See* McMahon, J., *Directory of Organizations and Resource Centers of Medicolegal Interest,* AMERICAN JOURNAL OF LAW & MEDICINE 3(1): 97 (Spring 1977). *See also* Kapp, M., *Medical Books As Evidence: An Attorney's Introduction to the Literature,* FLORIDA BAR JOURNAL 55(11): 795 (December 1981).

5. R. L. PEKARSKY, DENTAL PRACTICE FOR TRIAL LAWYERS (Harrison Co., Norcross, Ga.) (1983).

6. *See, e.g.,* J. S. MCQUADE, ANALYZING MEDICAL RECORDS: A METHOD FOR TRIAL LAWYERS (Harrison Co., Norcross, Ga.) (1981).

7. Employees' Benefits, 20 C.F.R. Part 404 (revised, April 1, 1982)

8. *See, e.g.,* Appelbaum, P., *The Disability System in Disarray,* HOSPITAL AND COMMUNITY PSYCHIATRY 34(9): 783 (September 1983).

9. In 1980, about three million Americans received SSDI benefits, at a total cost approaching $13 billion. Hadler, N., *Medical Ramifications of the Federal Regulation of the Social Security Disability Insurance Program,* ANNALS OF INTERNAL MEDICINE 96(5): 665 (May 1982). *See also* OFFICE OF RESEARCH, STATISTICS, AND INTERNATIONAL POLICY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHARACTERISTICS OF SOCIAL SECURITY DISABILITY INSURANCE BENEFICIARIES (U.S. Gov't Printing Ofc., Washington, D.C.) (1983).

10. *See* Kapp, M., *Promoting the Legal Rights of Older Adults: Role of the Primary Care Physician,* JOURNAL OF LEGAL MEDICINE 3(3): 367, 387–97 (1982).

11. D. C. KEENAN, C. R. ASHMAN, SOCIAL SECURITY DISABILITY CLAIMS: PRACTICE AND PROCEDURE (Harrison Co., Norcross, Ga.) (1983).

12. Employees' Benefits, 20 C.F.R. Part 416 (revised, April 1, 1982).

13. KEENAN, ASHMAN, *supra* note 11, at 63.

14. *See, e.g., Flood of New Legislation Attempts to Modify Policy on Social Security Eligibility,* HOSPITAL AND COMMUNITY PSYCHIATRY 33(11): 951 (November 1982).

15. B. J. FICARRA, MEDICOLEGAL HANDBOOK: A GUIDE FOR WINNING VERDICTS (Marcel Dekker, Inc., New York, N.Y.) (1983).

16. *Id.* at 12.

17. *Id.* at 17.

18. H. B. ROTHBLATT, HANDLING HEALTH PRACTITIONER CASES (Lawyers Co-operative Publishing Co., Rochester, N.Y.) (1983).

19. *See, e.g.,* R. GRAY, ATTORNEY'S TEXTBOOK OF MEDICINE (Matthew Bender, Inc., New York, N.Y.) (3d ed. 1981).

20. *See* D. DANNER, EXPERT WITNESS CHECKLISTS (Lawyers Co-operative Publishing Co., Rochester, N.Y.) (1983).

21. ROTHBLATT, *supra* note 18, at 405.

22. For an excellent presentation of this topic, see MCQUADE, *supra* note 6.

23. ROTHBLATT, *supra* note 18, at 178, 213.

24. *Id.* at 350.

Litigious Patients and Their Privacy Rights

Dear Editors:

I have now read Mr. Cargill's column in the February issue, *The Importance of Patient Privacy,* several times. Each time, I am reminded of the phrase from *Alice in Wonderland,* things are getting "curiouser and curiouser." It seems to me that Mr. Cargill has got his arguments backwards.

First, he argues that a decreased interest in the patient's "legal history" may result in decreased exposure to medical malpractice liability. The problem with that assertion is that the service he is complaining about is new, therefore the previous level of interest was zero. Not using the service now cannot decrease the incidence of malpractice litigation, because it was not used beforehand. A corollary to this observation is that since the service was not previously available, it could not have played much of an etiological role in the problem of medical malpractice as we know it today.

Mr. Cargill's second and most egregious argument is that "just as the 'service' which warns physicians of litigious patients invades the patient's privacy, so does the physician who gives out medical information without obtaining permission." I believe there is agreement concerning the second proposition—the unauthorized disclosure of medical information is a violation of patient privacy. However, the first proposition, providing physicians with their patients' litigation history, is the one to be proved. Yet, it should be plain that Mr. Cargill was trying to prove the second proposition by assuming the truth of the first.

Third, he converts the word "privacy" to a virtual meaningless collection of alphabets to assert that gathering information on civil plaintiffs from public records invades the litigant's privacy. Gathering information from the public record is simply not the same as disclosing private medical information.

Fourth, even if such information is private, it seems to me that Mr. Cargill has jumped to the conclusion that a physician's having this information works to the detriment of the patient. He has not presented one fact to support this notion. I do not provide any evidence to the contrary. However, when previously practicing as a surgeon, I learned one principle about taking care of patients that may be applicable to this point: learn all that you can about the patient, including his or her psychological and social interactions so that you may better care for him or her. Of course, since the physician is already the repository of private information, there does not seem to be much difference in having more of such information.

Finally, who is to say at this time that, assuming that the physician obtains the disputed information for the basest of motives, he or she would not be far more careful with the therapy of litigious patients to their benefit than otherwise?

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Mr. Cargill responds:

I am less concerned with the impact of a particular information service upon the incidence of malpractice liability, than I am with the principles of patients' privacy. Although the information is public in nature, its collection and its transmission perpetuate and do not prevent an adversarial relationship between physican and patient.

I cannot argue with the proposition that a physician should learn all that he or she can about a patient. However, this information should be gathered with the goal of helping the patient, not the doctor. The information at issue here is not of the type which indicates anything relating to diagnosis or treatment. It is collected solely for the continued health of the physician.

I must agree with Dr. Dong's last point, which is one which had not occurred to me. If physicians would be more careful treating these patients, perhaps they should be privy to such information. Furthermore, perhaps we should all try to get our names on that list.

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