



### PHYSICIAN ELECTING TO TREAT BY PROLOTHERAPY ALTERS THE METHOD AT HIS PERIL

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Physicians generally know that they may be subject to and can lose a malpractice suit if they deviate in their medical care of a patient from the customary or standard method of treatment followed in the community should adverse results occur. However, it should be remembered that one does not have to follow the method of

treatment practiced by the majority of physicians to avoid legal liability; a physician is permitted to follow a form of treatment used by a minority of physicians if they are reputable and of good standing. But, if he varies from the minority method of treatment, he does so at the same peril if he should deviate from the generally accepted method of treatment.

The plaintiff, a highway patrolman, sustained a moderate sprain of his neck as the result of an automobile accident. Prior to the accident, his general health had been good. His only previous serious illnesses were appendicitis, for which his appendix was removed, and one incident of kidney stones.

The defendant physician recommended a method of treatment called prolotherapy. The plaintiff at first refused, but later consented. Prolotherapy, as a method of treatment, was first prominently used and named by George Hackett, M.D., of Canton, Ohio. In 1956 Dr. Hackett published a book about prolotherapy, wherein he described the following: This method of treatment consisted of injecting ligamentous attachments with a sclerosing or proliferating solution for the purpose of creating a proliferation of tissue at the attachment of ligaments to the bone. The purpose of the injection is to create a "weld" of torn ligaments. The defendant physician had read Dr. Hackett's book and, prior to his treatment of the plaintiff, had visited the offices of Dr. Hackett. The defendant physician was told how to administer these injections.

When plaintiff consented to these treatments, he was not told by Dr. Bralliar, that Dr. Bralliar had deviated from the manner of treatment prescribed by Dr. Hackett. Prolotherapy, as espoused by Dr. Hackett at the time defendant instituted its use upon plaintiff, was recog-

nized as an appropriate method of therapy by a small minority of physicians in the United States and was a method of treatment they themselves used. The minority of physicians has not been shown to be other than respectable physicians.

The defendant varied his method of prolotherapy in the following particulars:

1. Defendant started treating plaintiff with prolotherapy five weeks after the injury whereas Dr. Hackett recommended no treatment by prolotherapy for a minimum of three months. This period is to allow normal healing of injured tissue.

2. Defendant diagnosed plaintiff as having torn ligaments at a time when plaintiff had muscle spasm, and Dr. Hackett had advised that it is impossible to diagnose torn ligaments when muscle spasms are present.

3. Defendant repeated injections in areas previously injected without waiting a minimum of six to eight weeks, contrary to Dr. Hackett's statement that such a wait is necessary because it took that long for the reaction to subside and for the proliferation solution to build up new tissue.

4. Defendant used a solution for his injections which was 50 per cent stronger in terms of sclerosing material than that recommended by Dr. Hackett.

5. Defendant manipulated plaintiff's neck and back in the course of treatment with prolotherapy. This was contrary to Dr. Hackett's expressed warning that manipulation was contra-indicated because the new cells were weak and the anticipated benefits would be less if the cells were subjected to strain before they were strong.

As a result of the prolotherapy treatments, as these were administered to the plaintiff, a scarring or fibrosis or sclerosis of the soft tissue of the neck and back occurred, which has caused, is causing, and will continue to cause severe and intractable pain to the plaintiff. As a further result, because of the persistent pain and stress, the plaintiff developed a peptic ulcer for which he later had to have surgery. In addition, the plaintiff became an addict because of the continued necessity to take pain relieving medication, and it is reasonably probable that psychiatric treatment will not cure him of his narcotic addiction, since he will probably continue to have pain on a permanent basis.

The court concluded as a matter of law that prolotherapy as a method of treatment cannot be said to be an inappropriate method of treatment, or to be malpractice even though it has not been accepted as a proper method of treatment by the medical profession generally. Prolotherapy, though, as practiced by the defendant in his treatment of the plaintiff was not proper medical practice anywhere, as no physician would have practiced prolotherapy as the defendant did in treating the plaintiff. The defendant's treatment of the plaintiff constituted malpractice in that it was an untested method of treatment and might or could cause injury to the patient and in fact, did cause injury to the plaintiff. Plaintiff was awarded \$130,000. *Brallier v. Leach* 275 F. Supp 897 (1967).

There are exceptions, which permit physicians to vary  
(Concluded on page 346)

**Dr. Henry Davis Primas, Jr.** (M.D., Howard, '50), aged 41, died on May 26, 1967, of coronary occlusion. Dr. Primas was from Braddock, Pennsylvania where he served on the staffs of Braddock General Hospital and Homestead Hospital. He was certified by the American Board of Internal Medicine and was an officer in the medical reserve corps of the U.S. Army from 1951 to 1953.

**Dr. Ralph Melvin Wimbish** (M.D., Meharry, '50), 45, of St. Petersburg, Florida, died on December 2, 1967, of coronary artery thrombosis. He was on the staffs of Mound Park and St. Anthony's Hospitals.

**Dr. Napoleon B. Callier** (M.D., Meharry, '12), 82, of Chattanooga, Tennessee, died on July 1, 1967, of cancer of the pancreas. Dr. Callier was on the staff of the Baroness Erlanger Hospital.

**Dr. Milton Carey Lewis** (M.D., Howard, '20), 72, of Kansas City, Missouri, died on May 6, 1967, of coronary occlusion. Dr. Lewis was a veteran of World War I.

**Dr. Richard Thomas Turfley** (M.D., Howard, '45), of Pittsburgh, Pennsylvania, died in the Mercy Hospital on November 10, 1967, of amyotrophic lateral sclerosis. He was 55. Dr. Turfley was a veteran of the Korean Conflict and was on the staff of the Kane Hospital.

**Mr. W. M. Rich**, superintendent of Lincoln Hospital, Durham, North Carolina, from 1935 to 1960, has passed away. The Hospital enjoyed its greatest period of growth under his administration (v. this *Journal*, v. 55, pp. 177-183, 1965).



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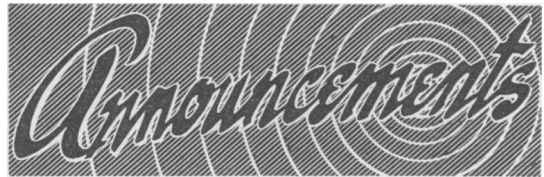
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(Coleman, from page 348)

his treatment from the norm without expressed consent by the patient.

1. If the patient's condition is of such a nature that he can not undergo the approved method of treatment.
2. If the approved method of treatment has failed to bring about an improvement of the patient's condition.

(Fondo, from page 313)

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7. FISHMAN, W. H. and B. SPRINGER and R. BRUNETTI. Application of an Improved Glucuronidase Assay Method to the Study of Human Blood Beta-glucuronidase. *J. Biol. Chem.* 173:449-456, 1948.