The Doctor Lawyer Dilemma

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Doctor-Lawyer Dilemma

Compensation litigation describes the standard civil suit where a plaintiff sues a defendant for alleged negligence resulting in physical and possibly psychiatric injury. Psychiatrists are commonly called as expert witnesses by lawyers for both sides regarding the presence of psychiatric injury, and whether it was caused by the alleged conduct of the defendant. Account may also need to be taken of the adverse effects upon the plaintiff of the stress of the litigation itself. A defendant who is found liable has to make financial compensation for all resulting injuries, which may include the effects upon the plaintiff of having to bring court proceedings (this is the principle of awarding a successful litigant legal costs).

Underlying Dr. Henderson's interesting paper (page 530) are the different professional interests in causes and consequences. Psychiatrists seek the causes which explain consequences, and make them open to prediction. Those predisposed to injury may be considered by psychiatrists to be victims in advance of particular incidents that trigger injuries. Trial lawyers are brought into action by consequences, and employ legal rather than scientific principles of causation (1). Where liability is based upon responsibility for causing direct consequences, as it is in negligence law, wrongdoers take their victims as they find them, however unforeseeably. Victims' contributory negligence in placing themselves at risk may reduce damages recovered, but without affecting the principles of wrongdoers' fault.

Dr. Henderson's contrast of the scientific ideal of the psychiatrist with the relativity of truth established in adversarial litigation is useful, but may rather overstate the case. A court will determine the better of contending sets of evidence and argument, but its conceptual basis is comparable to that of a scientific test. Where a drug or therapy is unproven, for instance, it will be tested against the negative hypothesis that it is ineffective. If testing proves that it is indeed ineffective, a truth has been established. If it is not proven to be ineffective, however, the conclusion that it may be effective remains a hypothesis — the type of relative truth which a court of law may reach. The legal burden of proof defines a positive hypothesis which is to be established, by due process of law rather than by scientific validation.

An approach towards rapprochement of having opposing lawyers and their advisors agree before trial what credentials and experience may constitute expertise in a potential witness may reduce the abrasiveness in court of determining whether an offered witness is an expert, and whether the expertise the witness possesses is relevant to the issues in dispute. Care must be taken, however, in over-familiarizing experts with the needs of lawyers calling them, lest their integrity may appear compromised. Lawyers call experts when they know what they intend to say, but the experts are guided by their clinical assessments, not by their awareness of what lawyers want courts to hear. Experts serve only their own discipline, not the parties nor their lawyers who hope to employ their expert opinions, and must maintain their intellectual and emotional detachment. They must be guarded against becoming, and against appearing to be, advocates of the sides calling them (2).

Nevertheless, collective professional interactions of psychiatrists and lawyers in joint seminars, meetings and workshops are to be strongly encouraged, since they assist mutual understanding and respect between the two professions and disciplines.

References

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