MALICIOUS PROSECUTION: TRULY A VIABLE ACTION ON THE PART OF ONE FALSELY ACCUSED OF MEDICAL MALPRACTICE?

In recent years medical malpractice claims and litigation have proliferated in this country. Often such claims are perceived as groundless by the medical practitioner, who feels that the patient's attorney files suit only as a means of coercing the medical practitioner into an out-of-court settlement. When a suit is dropped by the patient prior to trial, or when the medical practitioner prevails at trial against a malpractice lawsuit, the practitioner may be angered, feeling that there never existed a valid basis for the action. Responding to such anger, some medical practitioners file countersuits against the patient and/or the patient's attorney. Lawsuits of this nature may take any of several forms, but malicious prosecution is the cause of action which appears to have the most potential for the medical practitioner.

This article discusses malicious prosecution as a cause of action and indicates some of its strengths and weaknesses when used as a retort to a groundless medical malpractice claim. The article also examines some alternatives intended to help reduce the incidence of spurious medical malpractice litigation.

AN OVERVIEW OF THE CAUSE OF ACTION

Aside from a difference concerning the element of special, as opposed to general, damages the states all utilize a similar group of requisite elements for a successful malicious prosecution action. Although the number of elements and the specific language vary among the jurisdictions, they each require, in addition to a showing of special or general damages: 1) that the defendant initiated, continued, or procured civil procedures against the plaintiff; 2) that the medical malpractice lawsuit was terminated in favor of the medical practitioner by verdict, summary judgment, or dismissal; 3) that there was a lack of probable cause for filing the medical malpractice suit; and 4) that the patient and/or the patient's attorney acted maliciously, and for a purpose other than to properly adjudicate the claim.

The probability of success by the proponent of a malicious prosecution

1 The term "medical practitioner" is not limited to physicians. Medical malpractice suits are also brought against hospitals, dentists, nursing personnel, and other providers of services in the health care setting.

2 Support by practitioners for their colleagues is evidenced by their contributions to pay legal fees of countersuing practitioners. See e.g., 20 Am. Med. News June 6, 1977, at 1.

3 Other causes of action, such as defamation and libel, abuse of process, and negligence will be discussed later in this article. See infra p.p. 563-64. Additionally, see Annot., 84 A.L.R.3d 555 (1978) for a compilation of medical malpractice countersuits. See also Reuter, Physician Countersuits: A Catch 22, 14 U.S.F. L. Rev. 203 (1980).

4 See Restatement (Second) of Torts § 674 (1976).
action depends in large part upon the damages position adopted by the state in which the claim is brought. A minority of seventeen states have adopted the requirement that the proponent prove special injury and special damages as an element of the case in order to recover. Some of the minority jurisdiction states go further, preventing a plaintiff in a malicious prosecution action from recovery unless he has been arrested or his property seized. One reason set forth for this requirement rests in the desire that the judicial system remain freely open to those with good faith claims. To permit the victorious medical practitioner to prevail in a malicious prosecution action, absent a showing of special injury, could deter patients from bringing legitimate medical malpractice suits.

The minority jurisdiction courts have ruled that special damages do not include loss of income, transportation costs incurred as a result of the medical malpractice claim, increased medical malpractice insurance premiums, mental anguish, the cost of legal counsel, or the loss of consortium and companionship of the accused's spouse. Special damages also do not include the cost of defending one's professional reputation because damage to the medical practitioner's professional reputation is a potential result of any malpractice claim.

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The majority view, shared by twenty-seven states,\(^{14}\) the Restatements\(^{15}\) and Prosser,\(^{16}\) requires only a showing of general damages by the medical practitioner. Consequential damages are permitted for any arrest or imprisonment, harm to the medical practitioner's reputation, legal defense costs, losses shown to have resulted from the lawsuit, or emotional distress.\(^{17}\) Prosser also states that, due to the nature of the tort, punitive damages should be granted when the client or attorney used "ill will or oppressive conduct" in the prosecution of the initial claim.\(^{18}\)

Other problems can arise relating to the additional elements of malicious prosecution in majority jurisdictions. The requirement that the medical malpractice lawsuit must terminate in the medical practitioner's favor usually presents no difficulty of proof. The case must have been resolved on the merits and not on a technicality, e.g., a statute of limitations defense.\(^{19}\) One problem involves the malpractice insurance company anxious to settle the claim out of court by negotiating and paying a settlement to the patient. Such an out-of-court settlement generally will not constitute a termination in the defendant's favor, therefore leaving him without one element of his malicious prosecution claim.\(^{20}\)

In one case in which the malpractice suit went to trial but was dismissed by the court because the parties entered into a settlement agreement, the court considered such dismissal to amount to a termination in favor of the medical practitioner for the purpose of instigating a subsequent malicious prosecution action.\(^{21}\) At least one court has ruled that the statute of limitations for bringing a malicious prosecution action does not begin to run until the termination of the medical malpractice case in the medical prac-

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\(^{14}\) Those "majority" jurisdictions are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Vermont, and West Virginia. See Greenbaum, *supra* note 3.

\(^{15}\) Restatement (Second) of Torts § 681 (1976).


\(^{18}\) W. Prosser, *supra* note 17, at § 119.

\(^{19}\) Lackner v. LaCroix, 25 Cal. 3d 747 at 750-52 159 Cal. Rptr. 693 at 694-96, 602 P.2d 393 at 394-95 (1979).

\(^{20}\) The medical practitioner who refuses to permit his insurance carrier to settle the patient's claim out of court when the policy permits the company to negotiate a settlement at its option, may find that he is effectively left without insurance protection.

tioner's favor, rather than beginning to run at the time the medical malpractice lawsuit is brought.\textsuperscript{22}

The requirement that the medical practitioner prove a lack of probable cause in the patient's medical malpractice claim appears to be the major hurdle in a malicious prosecution suit in all jurisdictions. Probable cause can be defined as reasonable grounds to believe a cause of action exists, supported by the facts and circumstances of the case.\textsuperscript{23} The test bottoms on the question of whether a "reasonable man," given the facts, would have begun proceedings. The difficulty for the medical practitioner of showing a \textit{total lack} of probable cause results in the dismissal of a number of malicious prosecution lawsuits.\textsuperscript{24} One court has ruled that prior to filing a lawsuit, the attorney must diligently investigate the facts and may not rely solely on his client's contentions that there is "probable cause" to file the suit.\textsuperscript{25}

The element of malice also presents difficulties of proof for the medical practitioner. If, indeed, there was probable cause for bringing the malpractice action, it is unlikely that the suit was brought maliciously.\textsuperscript{26} However, one may show lack of probable cause without a showing of malice. The successful plaintiff must prove malice in the legal sense of an intentionally performed wrongful act; e.g., the defendant must have initiated the first suit unreasonably and for an improper purpose. "[I]f the attorney's offense is only negligence - sloppiness, ignorance of the law, or bad judgment - he has no obligation to anyone other that his own client for his professional inadequacies."\textsuperscript{27} One court has ruled, however, that when the attorney brings a malpractice suit against a medical practitioner without the express or implied consent of the client/patient, there is a \textit{prima facie} case of malicious prosecution by the attorney and the attorney has acted with malice.\textsuperscript{28} There, a physician repaired the patient's broken limb with a pin which proved to be defective. The physician suggested to the patient that he might wish to sue the manufacturer of the pin. The patient contacted the attorney for such purpose, telling the attorney that he did not wish to sue the physician. The attorney sued the physician for medical malpractice notwithstanding the patient/client's request. The court ruled that an attorney brings a lawsuit as an agent of the client, and when the attorney sues a party without the client's consent agency status is destroyed.\textsuperscript{29}

\textsuperscript{22} Shulman v. Miskell, 626 F.2d 173 (D.C. Cir. 1980).
\textsuperscript{23} Board of Education v. Marting, 88 Ohio L. Abs. 453, 185 N.E.2d 583 (C.P. Fayette 1961).
\textsuperscript{26} Fields v. Goldstein, 379 So. 2d 410 (Fla. Dist. Ct. App. 1980).
\textsuperscript{28} Huene v. Carnes, 121 Cal. App. 3d 432, 175 Cal. Rptr. 374 (1981).
\textsuperscript{29} Id.
Thus, the success or failure of a medical practitioner is not entirely dependent upon whether the jurisdiction in which the suit is brought adopts the majority or the minority view on damages; other requirements must be met before the medical practitioner can maintain a successful suit. Notwithstanding the difficulties involved, some medical practitioners have successfully brought malicious prosecution actions against patients and their attorneys. In Nelson v. Miller, a 1980 Kansas Supreme Court case, the patient was given a dilation and curettage (D & C) without first being tested for pregnancy. She was pregnant, and it was alleged that the surgical procedure injured the fetus. A medical malpractice suit based upon negligence was brought against the hospital in which the procedure was performed and the physicians involved in the operation, including Dr. Nelson. The claim was dismissed as against Dr. Nelson prior to trial, with leave to rejoin him as a defendant within six months if subsequent discovery revealed a need to do so. The case was tried against the remaining defendants. The court ruled that the decision to perform the D & C without a pregnancy test was a matter of medical judgment, and thereby absolved the defendant medical practitioners of liability for negligence. The Kansas Supreme Court reversed a lower court dismissal of Dr. Nelson's suit against the patient's attorneys for malicious prosecution, allowing him to proceed in his action. The court, however, denied Dr. Nelson's claim against the attorneys for negligence.

The Tennessee Court of Appeals, in Peerman v. Sdicane, ruled in favor of a physician against the patient's attorney in a malicious prosecution lawsuit where it was found that the attorney based his charges in the medical malpractice suit upon speculation, rather than upon a proper investigation of the facts, before bringing suit on behalf of the patient/client. In this case, the patient visited the office of Dr. Peerman, a gynecologist, who tentatively diagnosed the patient's condition as gonorrhea, but told her that he would be unable to make a final diagnosis until her laboratory test results were available. The patient returned to Dr. Peerman's office two weeks later to find that the test results were negative, indicating that she did not have gonorrhea. The patient then sued Dr. Peerman for negligence in the diagnosis of her condition, further alleging that the two-week delay in receiving the test results was due to the fact that Dr. Peerman was receiving kickbacks from the laboratory which ran the test. She alleged

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51 Id. at 272, 607 P.2d at 440.
52 Id.
53 Id. at 286, 607 P.2d at 449.
54 Id. at 289, 607 P.2d at 451. See infra text accompanying note 62.
56 Id. at 244-45.
57 Id. at 243.
that the test results would have been available much sooner if the specimen had been sent to a different laboratory.\footnote{\textit{Id.}}

After prevailing in the malpractice action, Dr. Peerman sued the patient and her attorney for malicious prosecution. His claim was later dismissed as to the patient, but he was successful in the lawsuit as it pertained to the patient's attorney. In finding for Dr. Peerman, the court held that the attorney failed to investigate the allegations of kickbacks and delays in obtaining laboratory test results.\footnote{\textit{Id.}} The attorney did not take Dr. Peerman's deposition nor consult a physician as to the applicable standard of care in the community. In fact, the patient's test results were available at Dr. Peerman's office forty-eight hours after the initial office visit, and the only reason that the patient was not apprised of the negative results is that she did not call the doctor's office to ask for a report.\footnote{\textit{Id.}} The slightest investigation by the attorney would have revealed these facts.\footnote{\textit{Id.}}

A recent Kentucky case granted two physicians damages in a malicious prosecution suit against a patient's attorney.\footnote{\textit{Id. at 244-45.}} In this case, the patient's shoulder was injured during hospitalization for a cardiac ailment, and the patient subsequently sued a radiologist and an orthopedist for $500,000 each. The patient later agreed to dismiss these two physicians from the lawsuit, with prejudice, and the doctors instituted a malicious prosecution suit. The Supreme Court of Kentucky held that an award of both compensatory and punitive damages was appropriate when all elements of malicious prosecution were proven. The defendant attorney had improperly joined two doctors who could not have contributed to the patient's injury.

There are, of course, other cases in which the medical practitioner prevails in a malicious prosecution action. It should be pointed out, however, that these successful lawsuits occur primarily in those jurisdictions which have adopted the majority view on damages.\footnote{\textit{Id.}}

\textbf{THE OHIO POSITION}

The State of Ohio follows the minority position which requires a showing of special damages in a malicious prosecution lawsuit.\footnote{\textit{Id. at 245.}} Ohio also restricts the special injuries for which damages may be recovered to those situations in which there was interference with the property of the medical practitioner or in which the malpractice defendant was arrested.

\footnote{\textit{Id.}}\footnote{\textit{Id. at 244-45.}}\footnote{\textit{Id.}}\footnote{\textit{Id. at 245.}}\footnote{Raine v. Drasin, 621 S.W.2d 895 (Ky. 1981).}\footnote{Some practitioners have prevailed at the trial court level in minority jurisdictions, but this author's research has found no such case in a minority jurisdiction which has survived the special damages requirement on appeal.}\footnote{See note 3, \textit{supra}.}
The Ohio position is well illustrated in *Dakters v. Shane*. At the time of surgery, Dr. Dakters was not, and in fact had never been, the patient's physician. Only after the surgery and the occurrence of the alleged injury was Dr. Dakters consulted. Doctor Dakters, a physician specializing in neurosurgery, examined the patient as a consulting physician, gave a report of his findings to the attending physician, and did not see the patient again. The patient thereafter sued Dr. Dakters for negligence and medical malpractice seeking $800,000 damages for those injuries allegedly sustained while on the operating table. Doctor Dakters was dismissed from the malpractice suit and subsequently sued the patient and her attorney, Shane, for malicious prosecution.

The doctor lost at trial and on appeal. The appellate court based its decision upon the fact that Dr. Dakters had not been arrested nor had his property been seized. The court stated that Ohio has utilized this "strict rule" since 1900, and although the rule has been widely criticized, it remains the law until the Ohio Supreme Court opts to alter its position on the matter. The court listed four factors which favor and justify continued use of the "strict rule" adopted by the minority of jurisdictions:

1) Costs are given as adequate redress;

2) Courts should be free and open to all without fear of being sued in return;

3) Freely permitting malicious prosecution actions would make litigation interminable;

4) Defendant should have no right to a malicious prosecution action, since plaintiff has no action if a defense is malicious and groundless.

What should have been a valid claim on the part of the physician was barred because of Ohio's strict requirements for a successful malicious prosecution action due to the fact that he was not the patient's physician at the time of the alleged injury, nor at any other time. It is quite conceivable that Dr. Dakters would have been successful in a jurisdiction which has adopted the majority position.

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46 Id. at 196, 412 N.E.2d at 400.
47 Id.
48 Id.
49 Id. at 197, 412 N.E.2d at 400.
50 Id. at 198, 412 N.E.2d at 401.
51 Id. at 197, 412 N.E.2d at 401.
52 Id. at 198, 412 N.E.2d at 401.
53 Id.
OTHER THEORIES

Probably due to the difficulties of maintaining a successful malicious prosecution lawsuit, especially in a minority jurisdiction, some medical practitioners have attempted to sue the patient and/or the patient's attorney on other theories. Although not always available, one theory is abuse of process which requires proof that the malpractice claimant and/or his attorney misused the legal system in bringing suit.\(^{5}\) One recent abuse of process case in which the medical practitioner was victorious is Bull v. McCuskey.\(^{5}\) The court stated that abuse of process differs from a claim for malicious prosecution in that malice and a lack of probable cause are not requisite elements for a successful abuse of process action.\(^{5}\) Doctor McCuskey was charged with medical malpractice because the patient on whose behalf the suit was brought developed bed sores while hospitalized.\(^{5}\) The suit was filed by the attorney, Bull, even though the patient's attending physician had told the patient's guardian that the bed sores were due to the patient's refusal or inability to follow directions and were in no manner the fault of her previous physician, Doctor McCuskey, whom the guardian had discharged.

A settlement was reached prior to trial between the patient's guardian and the defendant hospital. Doctor McCuskey, refusing to permit his medical malpractice insurance carrier to settle the case on his behalf,\(^{5}\) won a jury verdict and the subsequent abuse of process case, successfully defending an appeal to the Supreme Court of Nevada.\(^{5}\)

A second alternative cause of action is defamation. Actions sounding in either libel or slander are generally unsuccessful because statements made in the context of judicial proceedings are privileged. In one such case, the physician who was successful in the medical malpractice trial charged that certain statements made by the patient's attorney in a petition in the case were libelous.\(^{6}\) The physician was successful at the trial level, but the ruling was reversed at the appellate level because the court felt that the statements in the petition were not made with actual malice,\(^{6}\) a required element in a libel claim.

A third alternative to a malicious prosecution claim is a claim against

\(^{55}\) Id. at 5.
\(^{56}\) Id. at 615 P.2d 957 (1980). It should be noted that Nevada takes the majority opinion on damages in a malicious prosecution suit.
\(^{57}\) Id. at 615 P.2d 960.
\(^{58}\) Id. at 615 P.2d 959.
\(^{59}\) Id.
\(^{60}\) Foster v. McClain, 251 So. 2d 179 (La. App. 1971). The allegedly libelous statements pertained to a claim that pieces of cotton or sponge were left in the patient's abdomen during a surgical operation. See also Raine v. Drasin, 621 S.W.2d 895 (Ky. 1981).
\(^{61}\) Foster v. McClain, 251 So. 2d at 179.
the patient's attorney for negligence. This theory is used by the physician because it is easier to prove than malicious prosecution; however, it is virtually never successful. The failure of such professional negligence claims occurs because there must be a breach of a duty flowing from the party accused of negligence to the proponent of the negligence claim.

Absent special circumstances, such as a fiduciary duty to a third party, the only obligation owed by the patient's attorney is that duty owed to his client, with no duty running to the adverse party in a lawsuit. One Ohio court has pointed out that attorneys must be immune from suit instigated by nonclients in order for the lawyer to fully represent his client's best interests.

Although an action by a medical practitioner for malicious prosecution against the patient and the patient's attorney may not mean certain success, there are no truly viable alternatives developed through the case law. Since the judiciary remains unable to fashion an adequate remedy for spurious medical malpractice claims, it may be necessary to find the answer to the problem elsewhere.

**POSSIBLE SOLUTIONS OUTSIDE THE JUDICIARY**

Some states have attempted to alleviate the problem by enacting statutes aimed at reducing groundless malpractice litigation. The California legislature recently passed such a statute. It requires an attorney to file

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62 This author's research has revealed no case in which a medical practitioner has been successful in a negligence claim against the patient's attorney. See Berlin v. Nathan, 64 Ill. App. 3d 940, 381 N.E.2d 1367, cert. denied, 444 U.S. 328 (1979) (reversing a finding of negligence at the trial level).


64 Brody v. Ruby, 267 N.W.2d 902, 906 (Iowa 1979).


68 For yet more possible theories, see Greenbaum, supra note 5, at 756-58. The author notes that these also have little chance of success.


60 CAL. [CIV. PROC.] CODE § 411.30 (West Supp. 1981) states in pertinent part:

(a) In any action for damages arising out of the professional negligence of a person holding a valid physician's and surgeon's certificate issued pursuant to Chapter 5, ... or of a person holding a valid dentist's license issued pursuant to Chapter 4, ... on or before
a certificate with the court declaring, in effect, that the attorney has consulted a qualified medical practitioner who has concluded that there is probable cause for a medical malpractice action. This statute, by its own terms, expires on January 1, 1984.70

Florida's statute, effective in 1980, takes a different approach to the reduction of frivolous medical malpractice lawsuits.71 This statute requires the date of service of the complaint on any defendant, the plaintiff's attorney shall file the certificate specified in subdivision (b).

(b) A certificate shall be executed by the attorney for the plaintiff declaring one of the following:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one physician and surgeon or dentist who is licensed to practice and practices in this state or any other state or teaches at an accredited college or university and who the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of such review and consultation that there is reasonable and meritorious cause for the filing of such action.

(2) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations, . . . would impair the action and that the certificate required by paragraph (1) shall be filed within 60 days after service of the complaint.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because the attorney had made three separate good faith attempts with three separate physicians and surgeons or dentists to obtain such consultation and none of those contacted would agree to such a consultation.

(c) Where a certificate is required pursuant to this section, only one such certificate shall be filed notwithstanding that multiple defendants have been named in the complaint or may be named at a later time.

(d) Where the attorney intends to rely solely on the doctrine of "res ipsa loquitur", as defined in Section 646 of the Evidence Code, or exclusively on a failure to inform of the consequences of a procedure, or both, this section shall be inapplicable. The attorney shall certify upon filing of the complaint that the attorney is solely relying on the doctrines of "res ipsa loquitur" or failure to inform of the consequences of a medical procedure or both, and for that reason is not filing a certificate required by this section. . . .

(f) For purposes of this section, and subject to Evidence Code Section 912, an attorney who submits a certificate as required by paragraph (1) or (2) of subdivision (b) has a privilege to refuse to disclose the identity of the physician or surgeon or dentist consulted and the contents of such consultation. Such privilege shall also be held by the physician or surgeon or dentist so consulted, provided when the attorney makes a claim under paragraph (3) of subdivision (b) that he was unable to obtain the required consultation with the physician and surgeon or dentist, the court may require the attorney to divulge the names of physicians and surgeons or dentists refusing such consultation.

(g) A violation of the provisions of this section may constitute unprofessional conduct and be grounds for discipline against the attorney.

(h) The failure to file a certificate required by this section shall be grounds for a demurrer pursuant to Section 430.10.

(i) The provisions of this section shall not be applicable to a plaintiff who is not represented by an attorney.

(j) This section is repealed as of January 1, 1984.

70 Id. at (3)(j).

71 FLA. STAT. ANN. § 768.56 (West Supp. 1981): states:

(1) Except as otherwise provided by law, the court shall award a reasonable attorney's fee to the prevailing party in any civil action which involves a claim for damages by reason of injury, death, or monetary loss on account of alleged malpractice by any medical or osteopathic physician, podiatrist, hospital, or health maintenance organization; however, attorney's fees shall not be awarded against a party that who [sic]
the losing party in a medical malpractice suit to pay the prevailing party’s attorney’s fees. It also mandates that the attorney for the plaintiff patient shall inform his client of this provision, in writing, prior to the initiation of the malpractice action. The statute also provides that the courts will not assess such attorney’s fees against a nonprevailing party who is indigent or insolvent.

At least one commentator has attacked the Florida statute as unconstitutional, on the basis that the statute violates equal protection of the laws, since medical malpractice claimants are the only tort victims subject to its restrictions. It is contended that since Florida courts are already empowered to assess the prevailing party’s attorney’s fees against the losing party if the judge perceives that there were no justiciable issues of law or fact, this statute provides special protection for medical practitioners only.

In a 1980 article, a former president of the American Trial Lawyers Association advocated an effective method for reducing the incidence of groundless medical malpractice litigation. He proposed that the attorney should carefully scrutinize every malpractice claim for probable cause before bringing a lawsuit. Screening of the case prior to filing suit prevents the possibility of a malicious prosecution action by the medical practitioner in the event that the patient’s malpractice suit is unsuccessful by negating the practitioner’s element of lack of probable cause.

He also advocated consultation with a physician to determine whether there is probable cause for a malpractice action. He further recommended that the attorney gather all of the patient/client’s medical records and in-

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72 Spence & Roth, Closing the Courthouse Door: Florida’s Spurious Claims Statute, 10 STETSON L. REV. 397 (1981).

73 Id. at 398.

74 Id. However, even if existing Florida law provides for assessment of the prevailing medical practitioner’s attorney’s fees against the losing patient, the new statute mandates that it be set forth in writing to the patient prior to his bringing the lawsuit.

75 Wagner, Screening Medical Malpractice Cases, TRIAL, July 1980, at 67. Ward Wagner, Jr. was president of the American Trial Lawyers Association from 1975-1976.

76 Id.
formation on the medical history to be evaluated in making a determination on whether to bring suit.\textsuperscript{77}

CONCLUSION

Undoubtedly, unwarranted medical malpractice lawsuits are filed by attorneys. It appears that the solution to the overall problem can best be achieved by preventive, rather than remedial measures. To reduce malicious prosecution actions, there must be fewer groundless medical malpractice lawsuits.

Although there are other methods, such as state legislation, probably the most effective alternative is attorney self-regulation by screening potential malpractice claims. Numerous benefits could accrue; i.e. fewer unnecessary lawsuits placing a burden on the already over-crowded judiciary, fewer retaliatory lawsuits filed by falsely accused medical practitioners, better relations between the legal and medical professions, and less governmental involvement in the practice of law in the form of statutes such as those enacted by Florida and California. The benefits appear to be overwhelming. Seldom has the adage "an ounce of prevention is worth a pound of cure" been more appropriate.

CURTIS B. COPELAND

A SURVEY OF STATE LAW AUTHORIZING STEPPARENT ADOPTIONS WITHOUT THE NONCUSTODIAL PARENT'S CONSENT

I. INTRODUCTION

The increase of divorce and remarriage in American society has radically changed the concept of family. A typical family may no longer be composed of two parents and their biological offspring living in the same household. The trend is toward a stepfamily composed of a parent, a biological child, a spouse, and the spouse's child.\textsuperscript{1} This paper essentially concerns the ability of a stepparent (in most cases, a stepfather), married to a custodial natural parent, to adopt a minor child from a previous marriage without the consent of the noncustodial natural parent.

The legal obligations and rights of a stepparent to a stepchild have not been clearly defined. A stepchild, unlike an orphan, has not been legally

\textsuperscript{77} Id.