MEDIEVAL ENGLISH MEDICAL PRACTICE AND THE LAW : AN ANALYSIS OF CASES

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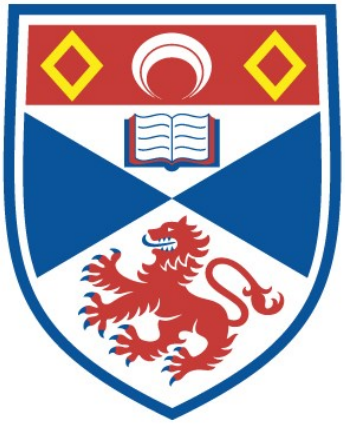
A Thesis Submitted for the Degree of MPhil
at the
University of St Andrews



1998

Medieval English Medical Practice And The Law: An Analysis Of Cases.

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I was admitted as a research student in September 1994 and as a candidate for the degree of M.Phil in September 1996; the higher study for which this a record was carried out in the University of St Andrews between September 1994 and March 1997.

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ABSTRACT

Medieval medical practice and the law: an analysis of cases.

This thesis is an exploration of the relationship between medieval medicine and the law from the thirteenth to the early sixteenth-century. Selected records of litigation between practitioners and their patients, particularly malpractice cases, have been used to illustrate not only the interaction of medical men with the law, but also to provide information on the practice of medicine, its practitioners and those who came to it for succour. A database of forty-six selected cases underpins this study.

Chapter one seeks to establish the context of the medieval medical profession. It reveals it to be a wide open marketplace in which several competitive factions operated, from the unlicensed leech to the university-educated physician; from the lowly barber to the guild-licensed surgeon. The medieval patient therefore had a wide choice of practitioners and a similarly wide range of expectancy.

Chapter two examines contemporary legal treatises and compilations in order to establish the theoretical legal context to medical and surgical practice. The responsibilities and culpabilities of practitioners are examined, and their role as expert witness is discussed.

Chapter three looks at the legal forums and procedures in which the selected cases were heard in practice. The procedures used, such as writs, and legal concepts, such as those of malpractice and trespass are illustrated by reference to specific cases in this study. Also discussed is private arbitration as an alternative to court litigation in the settlement of disputes between patient and practitioner.

Lastly the forty-six cases in the database are examined to provide information on actual medical practice. Areas of discussion include

contractual relationships between practitioners and their patients, demographic information and the nature of both disease and treatment encountered in the cases of the database. Thereby a vivid insight is provided into the interaction of the medical practitioner and the law.

ACKNOWLEDGEMENTS

It is traditional at this point to acknowledge those people who have contributed to the finished work in some form or another. There are many people without whom I would have been unable to complete this study and it would be impossible to name them all, therefore I shall be uncharacteristically brief. I'd like to thank my supervisor, Dr Simone MacDougall, for her unflagging support and encouragement, and her patience, which has amazed both of us, and Dr John Hudson for his advice concerning the intricacies of English Common Law. Mrs Roberta Wales' help and unceasing good cheer and Mr Frank Quinault's generous and understanding nature are also much appreciated. Lastly, grateful mention must be made of Reverend Bones whose support and inspiration have been essential during the completion of this work.

ABBREVIATIONS

Baildon, "Notes"	W.P.Baildon, "Notes on the Religious and Secular Houses of Yorkshire", Yorkshire Archaeological Society, 17 (1894)
B.H.M.	Bulletin of the History of Medicine
Bracton, De Legibus	Bracton De Legibus Et Consuetudinibus Angliae, ed. G.E.Woodbine, trans. S.E.Thorne (Harvard, 1968)
Bracton's Notebook	Bracton's Notebook, a Collection of Cases Decided in the King's Courts during the Reign of Henry III , ed. F.W.Maitland (London, 1887)
Britton	Britton, ed. and trans. F.M.Nichols, 2 vols. (Oxford, 1865)
C.C.R.	Calendar of Close Rolls
Cal. Coroners' Rolls	Calendar of Coroners' Rolls of the City of London AD 1300-78, ed. R.R.Sharpe (London, 1913)
C.L.B.	Calendar of the Letter Books of the City of London; Preserved among the Archives of the City of London at the Guildhall, ed.R.R.Sharpe (London,1899-1921)

C.P.M.R.	Calendar of Plea and Memoranda Rolls Preserved among the Archives of the City of London at the Guildhall, A.D.1323-1484, ed. A.H.Thomas (1926-61)
C.P.R.	Calendar of Patent Rolls
E.C.P.	Early Chancery Proceedings
E.E.T.S.	Early English Text Society
Eyre of London	The Eyre of London, 14 Edward II,ed. H.M.Cam, Selden Society Publications, 2 vols. (1968-9)
Fleta	Fleta, ed. and trans. H.G.Richardson and G.O.Sayles, Selden Society Publications, 3 vols. (1953-83)
J.H.M.A.S.	Journal of the History of Medicine and Allied Sciences
Justices in Eyre, Yorkshire	Rolls of the Justices in Eyre, Yorkshire 3 Henry III (1218-19), ed. D.M.Stenton, Selden Society Publications, 56 (1937)
Kiralfy, Source Book	K.R. Kiralfy, A Source Book of English Law (London, 1957)
Leges Henrici Primi	Leges Henrici Primi, ed. L.J. Downer (Oxford, 1972)
London Eyre 1276	The London Eyre of 1276, ed. M.Weinbaum, London Record Society, 12 (1976)
Mayor's Court Rolls	Mayor's Court Rolls, Original Bills

Mirror of Justices	The Mirror of Justices ed.W. J.Whittaker, Selden Society Publications, 7 (1895)
P.R.O.	Public Records Office
Proceedings before the Justices	Proceedings before the Justices of the Peace in the Fourteenth and Fifteenth Centuries, Edward III to Richard III, ed. B.H.Putnam (The Ames Foundation, 1938)
Selden Soc.	Selden Society Publications
Select Cases in Chancery	Select Cases in Chancery A.D. 1364-1471, ed W.P.Baildon, Selden Soc., 10 (1896)
Select Cases-Coroners' Rolls	Select Cases from the Coroners' Rolls A.D. 1265-1413, ed. C.Gross, Selden Soc., 9 (London, 1896)
Select Cases-King's Bench	Select Cases in the Court of King's Bench, ed. G.O.Sayles, Selden Soc., 7 vols. (1936-65)
Select Cases-Law Merchant	Select Cases Concerning the Law Merchant, ed. C.Gross and H.Hall, Selden Soc., 3 vols. (1908-32)
Select Cases of Trespass	Select Cases of Trespass from the King's Court 1307-99, ed. M.S.Arnold, Selden Soc., 2 vols. (1984-7)

Select Cases-Without Writ,	Select Cases of Procedure Without Writ Under Henry III, ed. H.G.Richardson and G.O.Sayles, Selden Soc., 60 (1941)
Surtees Soc.	Surtees Society Publications
Talbot and Hammond	C.H.Talbot, and E.A.Hammond, The Medical Practitioners in Medieval England; a Biographical Register (London,1965)
Year Book Edward II	Year Books of Edward II, 6 and 7 Edward II, 1313 ed. W.M.Bolland, Selden Soc., 36 (1918)
Year Book Richard II	Year Books of Richard II, 11 Richard II (1387-1388), ed.I.D.Thornley (The Ames Foundation, 1937)
York Memorandum Book (1376-1419)	York Memorandum Book, 1376-1419, ed. M.Sellars, Surtees Soc., 120 (1911)
York Memorandum Book (1388-1493)	York Memorandum Book, 1388-1493, ed. M Sellars, Surtees Soc., 125 (1914)

INTRODUCTION

This dissertation seeks to present an analysis of records of litigation between medical practitioners and their patients, particularly litigation concerning malpractice cases, and to discuss them as illustrative of medieval medical practice in England in the period from the thirteenth century to the early sixteenth century. The main sources for the practice of medicine during the Middle Ages are medical and surgical texts and compendia. Based on classical Greek and Arabic texts, these works were written by contemporary physicians and surgeons and propound Galenic humoural theory. Contemporary English texts include the thirteenth-century compendium of Ricardus Anglicus known as the Micrologus [1], the Rosa Anglica of John of Gaddesden, c.1314 [2], the Breviarium Batholomei of John of Mirfield, composed c.1380-95 [3], and the work of Gilbertus Anglicus, c.1400 [4], and the surgical work of John of Arderne written in 1376.[5] These texts were influenced and supplemented by the work of European medical and surgical writers.[6] These are by far the most informative sources for such topics as medical and surgical procedures, remedies and their

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[1]For Ricardus Anglicus and his compendium, the Micrologus, see Talbot and Hammond, pp.170-1

[2] John of Gaddesden, Rosa Anglica, ed. and trans. W.Wulff, Irish Texts Society, 25 (1929)

[3] John of Mirfield, Johannes de Mirfield: His Life and Works, ed. P. Horton-Smith Hartley and H.R.Aldridge (Cambridge, 1936)

[4] Gilbert Anglicus, Healing and Society in Medieval England: a Middle English Translation of the Pharmaceutical Writings of Gilbert Anglicus, ed. F.M.Getz (Wisconsin, 1991)

[5] John of Arderne, Treatises on Fistula in Ano, Haemorrhoids and Clysters, ed. D'Arcy Power, E.E.T.S., o.s.,139 (London, 1910)

[6]See for example Lanfranc of Milan, Lanfrank's Science of Cirurgie, ed. R.von Fleischhacker, E.E.T.S., o.s., 102 (1894); Henri de Mondeville, La Chirurgie de Maitre Henri de Mondeville , ed. and trans. E. Nicaise (Paris, 1893); Guy de Chauliac, The Cyrurgie of Guy de Chauliac, ed. M.S.Ogden, E.E.T.S., 265 (1971)

preparation, views on how the human body worked and how physicians and surgeons perceived themselves and regarded their patients.

Other sources such as university records, royal and civic records, incidental chronicle references and private correspondence such as the Paston letters [7], afford miscellaneous information on medical practice. Contemporary literature such as the works of Chaucer and Langland also refers to the medical profession.[8] All these sources can supply information or at least give an impression of contemporary medicine and its practitioners, but from the one-sided perspective of either the practitioner or the patient. Medical and surgical compendia for example, tend by their very nature to present the ideal rather than the reality of the surgeon or medical practitioner's role.[9]

A study of litigation involving patients and practitioners will thus give a fresh and different perspective on this subject.

Whilst research into the field of medieval medicine is gaining in momentum, the relation of the medieval medical profession to contemporary law is a largely unexplored area. Some inroads have been made into the topic of patient/practitioner litigation notably by Madeleine Pelner Cosman who has written several articles on medieval malpractice.[10] Other writers

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[7] Paston Letters and Papers of the Fifteenth Century ed. N.Davis, 2 vols. (1971-6)

[8] Geoffrey Chaucer, The Works of Geoffrey Chaucer, ed. F.N.Robinson (Oxford, 1970); William Langland, The Vision of Piers Plowman, ed. A.V.C.Schmidt (London, 1978)

[9] Patients in comparison very rarely wrote approvingly of the medical profession, as is shown by Margaret Paston's comment:
....for Goddys sake be ware what medesynys ye take of any fysissyanys of London. I shal never trust to hem be-cause of yowre fader and myn onkyl, whoys souwlys may God assoyle. Paston Letters, 1, p.218

[10] M.P.Cosman, "Medieval Medical Malpractice: the Dicta and the Dockets", Bulletin of the New York Academy of Medicine, 49; i (1973), 23-47; ibid., "Medieval Malpractice and Chaucer's Physician", New York State Medical Journal, 72; xix (1972), 2439-44; ibid., "The Medieval Medical Third Party: Compulsory Consultation and Malpractice Insurance", Annals of Plastic Surgery, 8 (1982), 152-62.

such as Carole Rawcliffe, Michael McVaugh, Guido Ruggierio and Joseph Shatzmiller have made use of legal records in their work. Joseph Shatzmiller has collated and written a localised study of the instances in which the medical practitioners of Manosque in Provence came into contact with the civic authorities during the period 1262-1348.[11] McVaugh and Ruggiero have written on the co-operation between the medical profession and the civil authorities in Spain and Italy respectively. Their studies are invaluable for comparison with the medical practice in England but, because of the pronounced differences between the organisation of the English medical profession and that of the Continent, have little direct bearing on this research.

In her studies into the status and practice of English court physicians and late medieval English medical practice in all its forms, Rawcliffe uses patient/practitioner litigation and legislation to great effect, but because of the wide scope of her work does not go into the detail that this study seeks to. Thus, barring Cosman's work on medieval malpractice, there is little that deals primarily with the interaction of the medical profession and the varied aspects of medieval law in England.

The main basis of this research consists of litigation involving physicians, surgeons and their patients, and other instances where the medical profession and law are jointly involved. The position of the medical practitioner, his responsibilities and his culpability as outlined by surviving

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[11] C.Rawcliffe, Medicine and Society in Later Medieval England, (Stroud, 1995); ibid., "Medicine and Medical Practice in Later Medieval England", Guildhall Studies in London History, 5;i (1981), 13-25; ibid., "The Profits of Practice: the Wealth and Status of Medical Men in Later Medieval England", Social History of Medicine, 2 (1988), 61-78; M .McVaugh., Medicine before the Plague; Practitioners and their Patients in the Crown of Aragon, 1285-1345 (Cambridge, 1993); G.Ruggiero , "The Co-operation of Physicians and the State in the Control of Violence in Renaissance Venice " , J.H.M.A.S., 33 (1978), 157-66; J.Shatzmiller, Medicine et Justice en Provence Medievale (Aix-en-Provence, 1989)

legal texts of the period will also be considered. Study of these areas yields varied and valuable evidence concerning the interaction of the medical profession and society from a view point hitherto neglected. Within these sources, the concept of expert testimony as applied to physicians and surgeons, their role in determining mental illness, the seriousness of injuries, causes of death and other areas where one might expect the medical profession to work in conjunction with the legal system will be examined. This will enhance the picture of the legal context within which physicians and surgeons operated, and provide a legal ideal to which the medical profession supposedly adhered. This legal ideal, like its ethical counterpart found in the contemporary medical etiquette texts, is not necessarily an expression of the expectation held by society in general of the medical profession. However, it does indicate a standard against which some part of society measured the conduct of physicians and surgeons, and therefore must be considered and evaluated as a possible influence on the medical profession.

The advantage of litigation as source material for the medical profession is that it presents the viewpoint of both practitioner and patient. The area of malpractice litigation is particularly rich. The general upsurge in litigation in the thirteenth and fourteenth centuries did not leave the medical profession unaffected. Medical practitioners, in the widest sense, were frequently the subjects of, and indeed the instigators of, legal suits.

Malpractice cases provide information on many areas of medieval medical practice and the relationship between patient and practitioner. From such cases much can be learnt about tangible concerns such as contracts between physicians, surgeons and their patients, fees, and the nature of malpractice and negligence. Also revealed is information concerning the patient, his or

her social status and the reasons which prompted patients to consult physicians and surgeons. Lastly, malpractice cases provide information on the patient's expectancy concerning their treatment and the criteria of evaluation applied to it which, when dissatisfaction occurred, could result in litigation. The matter of expectancy may seem an intangible area, but malpractice litigation reveals that the medieval patient very often had a distinct idea of exactly what he or she required from the physician and surgeon, and this was often expressed in the contracts drawn up between them and in the ensuing litigation.

Sources:

The main focus of this study is based on a detailed analysis of forty-six cases of litigation and other instances of the interaction of medical practitioners with the legal system. These cases by no means represent the totality of the cases uncovered by this study nor indeed the full potential of the sources used. However, they have been specially selected as particularly illustrative of those aspects outlined above.

The forty-six cases are derived from many different forms of records both primary and secondary. Court rolls from both central and local courts have been used; for central courts, Coram Rege Rolls, De Banco Rolls, Exchequer Rolls and Eyre Rolls; for local courts, Borough Court Rolls and Sheriff's Court Rolls. Other governmental and legal records such as the Patent Rolls and Close Rolls which contain state correspondence and formal directions from the king, and the Year Books, which evolve from collections of *dicta* to full accounts of legal arguments and eyre reports, have been used. Civic records have also provided material for this study, particularly the Letter Books, Coroners' Rolls and Plea and Memoranda Rolls of the city of London which have proved rich sources. These record noteworthy events and actions of the city. Lastly, private records such as the cartularies and muniment rolls of religious houses have supplied data on at least one case and provided other useful information to illustrate this work.

In the matter of secondary sources the biographical register of English medieval medical practitioners, compiled by Talbot and Hammond, and supplemented by Faye Getz has proved invaluable.[12]

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[12] See Talbot and Hammond; F.Getz, "Medical Practitioners in Medieval England", Social History of Medicine, 4 (1990), 245-83

Database:

Based on the wealth of information provided by the sources, a database has been formulated. It comprises every detail of the forty-six cases in question. The information stored in the database can be divided into several categories, medical, legal and personal. Medical details such as the ailments that caused the patients to seek medical treatment, the treatment they received for those ailments and any complications which ensued are recorded in the database. Also recorded are the fees they paid (or failed to pay) for their treatment and any contracts drawn up between the practitioners and their patients. Legal details stored in the database include the charges and countercharges brought by the litigants, whether patient or practitioner, any verdicts recorded, any damages awarded, which court the cases were heard in and any other pertinent legal aspects of the cases. Lastly, it contains the names, gender and occupation of all those involved in the cases, where supplied.

As is to be expected from such a miscellany of sources, the cases which form the database come in varying forms and yield varying amounts of information. Some sources actually provide an outcome or a case in its entirety, while others are merely intermediate stages in an ongoing process of litigation whose initiation and result are now lost. However, despite the exisitence of partial data only for most of the cases, the storage of this information in database form greatly facilitates the process of comparing and contrasting all possible aspects of the cases. The chonological nature of the database further illustrates the evolution of the relationship between practitioners, patients and the legal system. An increase in litigation is revealed, as is the frequency of contractual arrangements. Thus the formulation of such a database enables the extraction of maximum

information from the material used in this study. The database has further been used to constuct appendix one to which the case numbers in all subsequent footnotes refer.

CHAPTER ONE

THE MEDIEVAL MEDICAL MARKETPLACE

The medieval patient seeking help had access to a wide nexus of medical care according to his capacity to pay and the local availability of the type of practitioner he wished to consult. Medicine was very much a market place during the middle ages.

That market place consisted of many levels and factions often in direct competition with each other and even divided among themselves. In terms of professional status, training, education and financial considerations, these manifold factions can be separated into three generalised groupings: university-educated physicians, guild-trained surgeons and barbers who practised surgery, and lesser practitioners. These reflect the wide range of medical recourse available to the medieval patient, and must be defined and clarified in order to establish the underlying attitudes which permeated and shaped the medieval medical profession.

The university-educated physicians were, despite the prejudices engendered by modern advances in medicine, among the most educated men of their day; they were certainly as well educated as their modern contemporaries in their field. Although the requirements varied from university to university, a degree in medicine was the result of many years of arduous study. A sound grounding in the liberal arts before studying medicine was insisted upon by the universities because the Greek tradition of medicine held that study of the universe and man's place in it was essential to the practice of medicine. Many methods of treatment such as dietetics and phlebotomy depended on knowledge of the patient's

environment. Thus the would-be physician studied the *trivium* (grammar, rhetoric and logic) and the *quadrivium* (mathematics, music, geometry and astronomy). [13] Once embarked on the study of medicine he had to study for four years to gain admittance to practice and then another two years of medical study was required before he gained his licenciate and incepted as a doctor of medicine. Once licensed and incepted, a physician was expected to be conversant with a large body of medical theory drawn from texts known as the *articella* which formed the basis of the university medical curriculum throughout Europe.[14] The components of the *articella* varied from university to university but there was a basic core consisting of two Hippocratic texts, the *Aphorisms* and the *Prognostics*, the *Tegni* of Galen, the *Isagoge* of Johannitius, an Arabic introduction to Galenic medicine, a selection of extracts from Avicenna's *Canon* and a collection of short texts on the physician's main diagnostic tools of pulse and urine. These texts taught humoural theory, diagnosis, prognosis and the maintenance of good health by diet, regimen and therapeusis as well as some basic anatomy. They were not however, the totality of texts available to the Engish medieval physician. The texts listed by Chaucer in his description of the physician in

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[13] Several of these subjects were also seen as useful for the potential physician's career such as rhetoric and astronomy. The usefulness of astronomy is obvious given the influence the heavens were believed to wield over men's health, and rhetoric was not only an aid to understanding medical texts but could also be used to 'blind difficult patients with science'. In his Metalogicon John of Salisbury criticises those physicians who "quote Hippocrates and Galen, pronounce mysterious words, and have [their] aphorisms ready to apply to all cases. Their strange terms serve as thunderbolts which stun the minds of their fellowmen". In his warnings to those practising uroscopy, Arnold of Villanova goes even further than this. He advises the practitioner who is quizzed by the patient's servant to respond "You would not understand me if I told you." See John of Salibury, Metalogicon, trans. and ed. D.D.McGarry (Berkeley, 1955), p.18. I am indebted to Dr Simone MacDougall for supplying the above reference to the work of Arnold of Villanova.

[14] F.Getz, "The Faculty of Medicine before 1500" in The History of the University of Oxford ed. J.I.Catto and R.Evans, 2, pp.374-5; N.Siraisi, Medieval and Renaissance Medicine: an Introduction to Knowledge and Practice (Chicago, 1990), pp.58, 71

his General Prologue to the Canterbury Tales are representative of the literature commonly known and used by late medieval English physicians. [15]

> Wel knew he the olde Escalpius,
> And Deyscorides, and eek Rufus,
> Olde Ypocras, Haly, and Gaylen,
> Serapion, Razis, and Avycen,
> Averrois, Damascien, and Constantyn,
> Bernard, and Gatesden, and Gilbertyn.[16]

Finally the newly qualified doctor was, in theory, supposed to lecture at his graduating institution for a further two years. [17] Although this seems a long time, it frequently took much longer for the aspiring physician to qualify.

Unsurprisingly the numbers of such university-educated physicians remained low in contrast to other types of healers, and, because of their exclusivity and ambitions, they tended to gravitate to London and the service of the wealthy, the nobility and even the king and his court.

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[15] Rawcliffe, Medicine and Society, p.108 ; H.E.,Ussery, Chaucer's Physician; Medicine and Literature in Fourteenth-Century England (New Orleans,1971), p. 2; V.L.Bullough, "Medical Study at Medieval Oxford", Speculum 36 (1961) 606-10; Getz, "The Faculty of Medicine before 1500", p.384

[16] Chaucer, Works, p.21
In order of the texts cited: Aesclepius, Dioscorides, Rufus of Ephesus, Hippocrates, Haly Abbas, Galen, Serapion the Elder (9th century) or the Younger (11th Century), Rhazes, Avicenna, Averoes, Johannus Damascenus, Constantine the African, Bernard de Gordon, John of Gaddesden and Gilbertus Anglicus.

[17] This was however not always the case in practice as Rawcliffe notes. She cites the case of William Skelton, c.1440-71, whose study of medicine at Cambridge was interrupted during 1469-70 due to the lack of a master to lecture on the subject. He himself was given permission to incept without serving the regency period. Rawcliffe, Medicine and Society, p.109

Ironically, since they were the most educated of all the contemporary practitioners, many of them in fact practised very little medicine. Firstly, such physicians were often employed by a wealthy or noble patron to practise mainly preventative medicine rather than to cure an existing illness. This was ideally suited to the nature of their training as it involved ensuring their patrons' continuing health by the manipulation of his diet and lifestyle according to the precepts of the medical theory they had learned at university. However, many physicians soon found this became merely one of their functions in the household and often not their most significant one. Their education in the arts and the intimacy which grew between doctor and patient meant that they were also suited to the role of confidant, advisor and even, in the case of physicians at court and in the employ of the king and his family, government officials. [18]

Another factor in this non medical employment of physicians as counsellors, was that until the mid-fifteenth century university-educated physicians from English universities were generally clerics. Although this did not bar them from practising medicine or even, in the case of the secular minor orders, surgery, most clerical physicians preferred to avoid the practice of anything other than preventative medicine rather than face the possible detrimental effect on their career of being involved in the death of a patient. [19] Thus those who were regarded as most academically equipped to

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[18] John Gray c.1374-1425 was a Scots physician trained in Paris who acted as ambassador for the French king, Charles VII, on several occasions and is described in the Cartulary of the University of Paris as also being at one point the "counsellor and physician of James (I) King of Scotland". Talbot and Hammond, pp.151-2

[19]There has been much confusion on this subject but Amundsen's work does much to clarify the issue. He establishes that the Fourth Lateran Council (1215) forbids surgery only to those in major orders and that the main thrust of the canonical legislation on the subject is directed against the study of medicine (and secular law) as a distraction from the religious life and spiritual responsibilities of religious and secular clergy in major orders. He also notes, that with the exception of proceedures involving bloodshed, such as surgery

practise medicine seem to often have regarded it merely as a means to further their career in the circles of the rich and noble and as subordinate to their other clerical and administrative interests.

The shunning of surgical practices by the universities and the upper echelons of practitioners created or perpetuated a distinction between the arts of medicine and surgery.[20] Surgery was regarded by the physicians very much as a poor relation, a manual craft practised by artisans rather than an intellectual profession. This distinction was felt very strongly by the surgeons, and it is a rare surgical text that does not contain, or indeed begin with, a justification of the author's art and even, on occasion, an attack on the art of physic and its practitioners. For example, the following is from the Chirurgie of Henri de Mondeville, c.1301-19, a fourteenth-century French surgeon, who wrote extensively in defence of surgery and its practitioners.

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and cautery, clerics, both religious and secular, are not specifically forbidden to practise and that permission to study medicine could be obtained. D.Asmundsen, " Medieval Canon Law on Medical and Surgical Practice by the Clergy", B.H.M., 52 (1978), 22-44 Amundsen cites an example of such a situation in his article. In 1212 Innocent III was consulted about the status of a monk, who is also a priest, whose patient, a woman with a tumour on her throat, had died after disobeying his postoperative instructions. The issue under discussion is whether he may still exercise his priestly office. Innocent's reply seems less concerned with the fact that a religious cleric has practised surgery than with his motives for doing so. The monk is described as "usurping an alien function which very little suited him" but, as the woman confessed her responsibility for the action that led to her death, Innocent states that if the monk acted from piety and not cupidity then he may still celebrate the divine service. ibid., 39

[20] "Oh God.Why is there now such a great difference between physicians and surgeons? Physicians have given up the conduct of operations to laymen, either as some might say, because they scorn to operate with their own hands or (as I think) they do not know the best way to perform operations; and time has brought this abuse to such a pitch that ordinary people believe it impossible that the same man should have mastered both surgery and medicine." Lanfranc of Milan cited in M.C.Pouchelle, The Body and Surgery in the Middle Ages, trans. R.Morris, (Cambridge, 1990), p.14, fn. 249

> Surgery undoubtedly is superior to medicine for the following reasons:1. Surgery cures more complicated maladies, such as toward which medicine is helpless. 2. Surgery cures diseases that cannot be cured by other means, not by themselves, not by nature, nor by medicine. Medicine never cures a disease so evidently that one could say that the cure is due to medicine. 3. The doings of surgery are visible and manifest, while those of medicine are hidden , which is very fortunate for many physicians . If they have made a mistake, it is not apparent , and if they kill the patient, it will not be done openly. But if the surgeon commits an error while performing an incision on the hand or arm, this is seen by everyone present and could not be attributed to nature nor to the constitution of the patient .[21]

In contrast to the physicians, there was generally little university education available to surgeons. Certain of the European universities such as Bologna, Montpellier and Padua taught surgery to the physicians studying there. Bologna and the College of St Cosmas in Paris admitted surgeons for study but there were few courses of university education specifically for surgeons. In England, the clerical nature of the universities as opposed to the mainly lay nature of those in Italy, precluded the presence of surgery, anatomy and dissection in the curriculum. Thus the education and training of surgeons in England proceeded in another way and was organised and taught in the manner of a craft. Guilds existed for the barbers and surgeons of London from the fourteenth century, being well

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[21] Mondeville, Chirurgie , p.72

established by 1308 and 1369 respectively. Aspiring surgeons were apprenticed to master-surgeons who were licensed by the Guild and were trained by them for a set period. They were then examined by the master surgeons of the Guild before obtaining licence to practice. Like that of a physician, this training could last for many years. Rawcliffe gives a figure of five to six years as the minimum length of apprenticeship and Ussery states that the usual period of apprenticeship for a surgeon was seven years but adds that confusion exists in this area and the period could vary from five to twelve years. [22] During this period the apprentice was expected to gain a working knowledge of anatomy and become proficient in the majority of surgical techniques including phlebotomy in its varying forms, cautery, the application of various ointments, plasters and corrosive preparations, bonesetting and manipulation and surgical operations. [23]

Within the ranks of those practising these and other techniques, there were certain divisions. As the physicians considered the surgeons below them in skill and purpose, so too did the surgeons consider the barber-surgeons and barbers to be beneath them in experience and skill. Many surgeons were well educated. There is widespread evidence in texts and wills to show that some surgeons studied contemporary texts on their own initiative. Certainly some surgical texts stated the need for surgeons to have a grounding in medical matters as well.[24] Some wealthy and influential surgeons considered practices such as bleeding and cautery beneath them

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[22] Rawcliffe, Medicine and Society, p.126; Ussery, Chaucer's Physician, pp.11-12

[23] This applied to male or female, unlike physicians, practitioners of surgery admitted women into their ranks. See Rawcliffe, Medicine and Society, pp.187-9; English Guilds, ed. T.Smith, L.T.Smith and L.Brentano, E.E.T.S., 40 (1890), p.27; York Memorandum Book, (1376-1419) pp.207-10; Little Red Book of Bristol,ed. F Bickley, ii (Bristol, 1900) p.139

[24] "So lerne he fisik, that he mowe with good rulis his surgerie defende." Lanfranc, Science of Cirurgie, p.9

and abandoned them to the practice of those lesser members of the surgical faction. Some concentrated on performing certain operations which brought them fame and wealth, for example John of Arderne, a fourteenth-century English surgeon (1307-77), whose operation for fistula made him famous and for which he claimed never to have charged less than £5. [25] These educated surgeons tended to regard the barbers who bled people, practised cautery and performed various minor surgical operations, as artisans but they were in general, even in London where there was a higher concentration of skilled practitioners of all kinds, largely outnumbered by them. Barbers were frequently employed by surgeons as assistants, but John of Arderne's warning to other surgeons to keep the knowledge of certain techniques from barbers, lest they appropriate them and bring disrepute upon them, illustrates the attitude of many surgeons. [26]
Lastly there was the third group, referred to above, rather ambiguously, as "lesser " practitioners. This group included unlicensed physicians and others with some skill who had received some training but failed to meet university or guild requirements , namely barbers, apothecaries [27] and a tribe of unlicensed and unaffiliated practitioners such as leeches, bonesetters, toothdrawers, bloodletters, midwives, herbalists, treaclers [28]

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[25] Arderne, Fistula in Ano, p.6

[26] ibid., p.71

[27] Although theoretically apothecaries were purveyors of drugs not prescribers of remedies, and indeed in some places were specifically forbidden to prescribe independently, they frequently did and even performed other functions of the physician and surgeon's craft. For example, John le Spicer, whose name suggests that he was an apothecary, was accused in 1354 of having rendered a wound on the jaw of Thomas Shene incurable in the course of trying to treat it. Chartularium Universitatis Parisiensis, 1 pp.488-9; Case 16

[28] In the Middle Ages treacle or theriac was regarded as a panacea for all ills. Rawcliffe cites a fifteenth-century English source which credits treacle with the ability to " prevent swellings or distension, unblock intestinal stoppages, clear the skin of pustules or other blemishes, cure fevers, heart trouble, dropsy, epilepsy and palsy, induce sleep, improve the digestion, restore lost speech, strengthen enfeebled limbs, remove a dead child from its mother's womb, heal wounds and counteract the effects of venomous bites or poison on the

and wise women. As suggested by this list, unlicensed and unaffiliated medical practitioners came in many varieties providing mainly empirical remedies and skills. This group also included a proportion of quacks and conmen, but even the ranks of the university physicians were not entirely free from such opportunists. Despite their lack of professional qualifications and sanction, it was to these practitioners that the majority of the population seems to have turned for medical care. [29]

Despite the fact that, in towns at least, professional medical care was available, very often it was the uneducated and unlicensed practitioners who received the most custom. This was partly due to the fact that the majority of the population could not afford the high fees charged by the professionals and partly that such "lesser" practitioners were more numerous and thus more accessible even to those who might have been able to afford a professional's fee.

The availability of the varieties of medieval medical care varied considerably. The best educated and most skilled (not necessarily the same thing) practitioners congregated in towns and cities. London in particular, offered most scope for their advancement, and also a wider circle of those who could afford their sometimes exorbitant fees. [30] Concerning rural areas, information is somewhat limited due to lack of source material. Most

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body. It was also recommended specifically for use in vaginal suppositories to induce menstrual bleeding and as a part of the treatment for a prolapsed uterus, not to mention more generally as a prophylactic against the plague and other infectious diseases." Rawcliffe, Medicine and Society, p.152

[29] ibid., p.144

[30] Rawcliffe, working from Talbot and Hammond's biographical register, has identified 323 physicians, surgeons and barber-surgeons working in London from the early twelfth century. Even taking into account the ommissions due to varying rates of survival of civic and guild records and other sources, this compares very favourably to other towns and cities in medieval England. York and Canterbury which possess the second and third largest licensed medical populations have 33 and 29 such practitioners respectively. Rawcliffe, "Medicine and Medical Practice", p.13

studies concentrate on practitioners in urban centres as considerably more data is available concerning them. James Mustain and Peter Murray Jones, however, have, with their studies of two fifteenth-century rural practitioners begun to open up this area. [31] Given the mercenary nature of the upper echelons of the medical profession, it is not unreasonable to propose that smaller towns and villages were probably more sparsely supplied with university-trained physicians and master surgeons and turned instead to barbers, local empirical healers and travelling physicians and surgeons. It is not unusual to find examples of people coming from the surrounding area into towns to seek medical assistance. For example, in 1300 the death of one William Wattepas from Essex is recorded.[32] He came to London to be cured of an arm wound, but died of an unspecified illness whilst staying in Billingsgate. Similarly, Thomas, son of Richard de Hoddesdone was taken to London in 1325 for medical treatment for a head wound received in a quarrel but died shortly afterwards. [33] Sometime between c.1486 and 1515, John Dobson, the vicar of Melbourn in Cambridgeshire, travelled to London by horselitter to put himself into the care of one John Brown , surgeon, who, he hoped, would cure him of the paralysis inflicting the left side of his body. [34] Evidently medieval patients were accustomed to seeking out treatment and knew where the best medical advice was to be found.

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[31] J.Mustain, "A Rural Medical Practitioner in Fifteenth-Century England", B.H.M., 46 (1972), 469-76; P Murray Jones, "Harley MS2558: A Fifteenth-Century Medical Commonplace Book" in Manuscript Sources of Medieval Medicine, ed. M.R.Schleissner (London, 1995), pp.35-54

[32] Case 6

[33] Case 5

[34] Case 44

Where all three groups of practioners were to be found, the relationship between them was complex and often acrimonious. Tensions arose from two main causes, financial and professional. There was general disapproval for the third group from both the first two which considered them unqualified and a danger both to prospective patients and to their own livelihoods . This attitude is plainly set out in the physicians' petition to Henry V of 1421:

> ....many unconnying and unapproved in the forsayd Science practiseth, and specialy in Fysk, so that in this Roialme is evy man, be he nev so lewd takyng upon him practyse, y suffred to use hit to grete harme and slaughtre of many men: Where if no men practysed theryn but al connynge men and approved sufficeantly y learned in art, filosofye, and fisyk, as hit is kept in other londes and roialms, ther shulde many men that dyeth, for defaute of helpe, lyve and no man perysh by unconnyge.[35]

Acrimony existed between the qualified physicians and surgical practitioners. A long estabished professional rivalry between the two was aggravated by the intellectual snobbery of physicians and their demeaning attitude towards surgeons as mere 'manual operators'. This rivalry was somewhat diminished in smaller urban centres due to the presence of fewer practitioners, in particular physicians, but was strong in London where the most ambitious members of both these groups congregated.

The area of practice covered by physicians and surgical practitioners was wide. In general it was agreed that the inner workings of the body were the

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[35] Rotuli Parliamentorum, 4, p.158

province of the physician and external conditions such as wounds and manifest disease came under the aegis of the surgeons. Henri de Mondeville describes , somewhat ironically, the division of responsibilities by popular opinion in his Chirurgie:

> ....the peoples of the West, justly indignant, have decided, almost reversing what has just been said about the treatment of divers diseases, that all those which appear anywhere on the surface, on the whole body or only on part of it , such as wounds, ulcers, apostemes, scab, disease of the breasts, haemorrhoids, impetigo and other similar complaints, as well as all external afflictions of the head, arms, thighs and lower down, whose location can be determined, even if they do not appear on the surface , such as arthritis, short-sightedness, deafness, pain in the hands, etc must be treated by the surgeons, and that for treatment of these conditions one must always have recourse to surgeons exclusively. On the other hand, diseases within the internal cavity of the head and not outside it, or in the internal chambers of the body, except for gallstones, hydropsy and some ailments of this type, concern doctors alone, by the peoples' decision, and one must have recourse only to them for treatment. [36]

Of course these distinctions were not strictly adhered to. Physicians and surgeons regularly tried to encroach on each other's territory, and outside their ranks there were many who, though uneducated, unlicensed and

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[36]Pouchelle,The Body and Surgery, pp.17-18

unaffiliated, fought for a share in the traffic of the afflicted which the physicians and surgeons regarded as their preserve.

Thus, during the Middle Ages medicine was a market place. The physician, surgeon or leech had to promote and sell their skills in the same way as other craftsmen and participate in the competition for patients. This led to the banding together of certain groups, i.e. guilds, in order to protect their interests and exclude others who were percieved to be a threat to those interests. Of all three groups, the surgeons and barbers were the most proficient at forming a guild, while the small numbers of physicians, and a certain superiority complex on their part, seem to have hampered their attempts to do so, while the diversity and generally unofficial nature of the third group appears to have precluded such an attempt.

The guilds served several functions. First and foremost they protected their members' interests by trying to enforce a monopoly within their area of expertise and secondly, they attempted to enforce regulations and standards within their craft. [37] To do this they, like the other craft guilds, interacted with the civic authorities to punish transgressors of the guild regulations both within and outwith the guild. These guilds regulated, amongst other things, the training of apprentices, conditions under which treatment was or was not to be undertaken, standards required to gain licence to practice and, in some cases, even what levels of fees were appropriate and were more or less effective in the regulation of their crafts.

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[37] English Guilds, p 27; York, Memorandum Book, (1376-1419), pp.75-6, 207-11; G.A.Auden,"The Guild of The Barber-Surgeons of York", Proceedings of the Royal Society of Medicine, 20 (1928), 71-76; Little Red Book of Bristol , pp.69-71, 135-41, 152-8 ; Beverly Town Documents, ed. A.F.Leach Selden Soc 15 pp109-114; C.Rawcliffe, "Medicine and Medical Practice", pp.13-7; M.P.Cosman, "Medieval Medical Malpractice", pp.23-47 .

As previously stated, the barbers' guilds were in general the most efficient, in fact due to the small numbers of physicians and surgeons, the barbers' guilds appear to have been the main supervisory body for medical activity in many English urban centres excepting London, with physicians and surgeons bowing to their authority without much overt professional rivalry. Rawcliffe cites the ruling in Beverly in 1416 that surgeons, physicians and toothdrawers who intended to practise in the town for a year or more should pay the Barbers' Guild the same rate as its members.[38]

However, the control of the guilds over the English medical profession could not really hope to compare with that exercised by the universities and ecclesiastical courts in Europe. The opportunity for such supervision by the English universities was much more limited than in Europe. This was due mainly to the small and uninfluential nature of the medical faculties at Oxford and Cambridge, their comparatively slow development and their location away from the English centre of bureaucracy, legislation and patronage in London.[39] Being situated in Paris, for example, meant that the medical faculty of the university could exercise a much greater degree of control over licensing and practice, even of surgical and unaffiliated practitioners, often in conjunction with the king.[40]

Control over the licensing of practitioners was the main concern of the medical guilds and was the cause of much dispute between them, particularly in London. Not only was there dispute between the barbers' and

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[38] Rawcliffe, Medicine and Society, p.134; Beverly Town Documents, pp.111,113

[39] Getz, "The Faculty of Medicine before 1500", pp.385-7, 397-402; Siraisi, Medieval and Renaissance Medicine, p.18

[40] C.O'Boyle, "Surgical Texts and Social Contexts, Physicians and Surgeons in Paris c.1270-1430" in Practical Medicine from Salerno to the Black Death, ed. L.Garcia-Ballester *et. al.* (Cambridge, 1994), pp.156-185; D.Jacquart, "Medical Practice in Paris in the First Quarter of the Fourteenth Century" in ibid. pp.186-210; V.LBullough, "The Development of The Medical Guilds at Paris", B.H.M, 31 (1957), 33-40

surgeons' guild there as to who should have the power to licence practitioners of their craft, but the potentially powerful and beneficial Cojoint College of Physicians and Surgeons was hampered from the start by the refusal of the London Barbers' Guild to give up its independent licensing and supervisory rights. These rights were reaffirmed by the Mayor and Aldermen a year after the setting up of the Cojoint College in 1423 and were, in conjunction with internal faction fighting, one of the reasons for the College's speedy dissolution. [41] The next attempt at similar organisation by the physicians was in 1518, and the London surgeons were forced to cooperate with the inevitable and reach a compromise with the barbers after they were granted a royal charter of Incorporation in 1462. For those who practised medicine and surgery outwith the formal framework, the battle for licencing rights between the guilds had less relevance. The guilds' role was to attempt to prevent the practice of unlicensed practitioners , but the large numbers of such practitioners and the continued demand for their services meant that the exclusivity desired by the 'professionals' was not soon in coming.

This was the arena in which medieval medicine was practised, a market place in which every kind of medical recourse was for sale, from the ministrations of the highly educated physician to that of the humble leech. Practitioners were in direct competition with each other and behaved accordingly, banding together for protection not only from other medical practioners but also from the importunings of that most dangerous adversary, the dissatisfied customer.

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[41] It is illustrative of the power and influence wielded by the Barbers' Guild that it was able to insist on this reaffirmation of its rights. C.L.B, K, p.36

CHAPTER TWO

DOCTORS AND THE LAW, IN THEORY

The value of contemporary legal texts as a source of information for the relationship between the medieval medical profession and the contemporary legal system is a matter of debate. As always with such texts the question must be raised concerning to what degree they present a paradigm and to what degree they represent the actual reality of practice.

However, it is useful to suumarise themes within legal texts which pertain to areas of medical practice and which in different ways are reflected in actual cases of litigation. One may divide the subject matter revealed in law collections [42], custumals [43], handbooks of common law [44] and informal legal texts [45], into three areas: firstly, the specific mention of medical practitioners and their treatments; secondly, medical matters refered to without any overt connection stated, and finally, circumstances in which the involvement of medical practitioners might be expected but does not figure.

Specific mention of medical practitioners and their treatment is rare. Those references which may be found do not constitute regulations concerning the conduct of medical practitioners (for which guild records offer

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[42]For example, The Laws of the Earliest English Kings, trans. and ed. F.L.Attenborough (Cambridge, 1922); The Laws of the Kings of England from Edmund to Henry I, ed. and trans. A.J.Robertson (Cambridge, 1925); Leges Henrici Primi, ed.L.J.Downer (Oxford, 1972)

[43] Borough Customs, ed. M. Bateson, Selden Soc.,18, 21, 2 vols, i (London, 1904-6)

[44]For example, Tractatus De Legibus Et Consuetudinibus Regni Anglie Qui Glanvilla Vocatur, ed. and trans. G.D.G.Hall (London, 1965); Bracton De Legibus Et Consuetudinibus Angliae, ed. G.E.Woodbine, trans. S.E.Thorne (Harvard, 1968); Fleta, ed. and trans. H.G.Richardson and G.O.Sayles, Selden Soc., 3 vols, 72, 89, 99, (London, 1955-84); Britton, ed. and trans. F.M.Nichols, 2 vols, (Oxford, 1865)

[45] The Mirror of Justices, ed.W.J.Whittaker, Selden Soc., 7 (London, 1895)

far more fertile ground) but rather deal with the question of medical treament in the context of the patient and the fee.

The concept of the 'leech fee' is referred to in both pre and post Conquest legal texts. This is an amount, to be paid by the attacker to the plaintiff, in cases of wounding or assault. The laws of both William I and Henry I stipulate that in certain cases in addition to the compensation deemed proper to the wound or injury the attacker must pay the plaintiff's medical bill.

> If a man wounds another and has to pay compensation, he shall, in the first instance, pay the cost of his medical attendance (*leche[feo]*). And the wounded man shall swear on the holy relics that he could not do it for less and that he has not increased the amount out of malice.[46]

> If anyone injures another on the neck so that he suffers a curvature or stiffness or a lasting disability from it, and yet remains alive though thus incapacitated, compensation of one hundred shillings shall be paid and also whatever has been paid out for medical treatment, unless the calculation of the judges prescribes a larger award.[47]

The twelfth-century borough customs of Preston have a similar declaration concerning the subject of medical fees. Compensation is per inch and the wounded man is given additional compensation for losses sustained because of his wound, loss of trade, etc. as well as having his medical fees

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[46] The Laws of the Kings of England, William, Cap. 10, i p.259
[47] Leges Henrici Primi, Cap. 93;37, pp.298-9

paid. Here the emphasis is on mediation between the two parties by a friend rather than by the court.

> If a burgess wound another and they be willing to accept an agreement, the friends set between them shall take 4d for every inch of wound in an exposed part, and 8d for every inch in an covered part * and whatever loss the wounded man can prove that he has sustained through his wound the offender shall pay, and likewise whatever the wounded man paid for the healing of his wound the offender shall pay to him, and he shall bring his arms to the wounded, and shall swear upon the arms that if he [the wounder], had been similarly wounded by him [the wounded], he [the wounder] would have accepted what he now offers as compensation if his kin consented thereto and approved. [48]

Such excerpts and others provide some, if limited, information. Firstly it is obviously expected by those compiling and implementing these laws from a very early time, that medical treatment will be available to those wounded. This is of interest in itself in an era when the availability of medical care, particularly in rural areas, is subject to question by those studying this area.

Secondly, in the Leges Henrici Primi for example, there is shown an understanding of the possible consequences of various wounds and adjustments in the amount of compensation are made accordingly. Not only are the consequences of a neck injury anticipated, but in another section

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[48] There appears to be a mistake in the translation at the point indicated *, the Latin reads " *pro unoquoque pol[l]ice plage cooperte iii^{or} denarios, pro discooperto octo denarios*' ie visible wounds recieive more compensation than those in a covered place. This is consistent with other tables of compensation in contemporary law texts such as Leges Henrici Primi, Cap. 93;40, pp.300-1; Borough Customs, 1, pp.30-1

varying levels of compensation are set in the case of injury to the great sinews of the lower leg according to whether medical treatment has succeeded in preventing lameness. This states that 12s were to be awarded in the case of a cure and 30s in the event of maiming. [49] There are also references made to loss of fertility due to wounded genitalia [50] and possible loss of life due to a shoulder wound. [51] These particular wounds are singled out in several texts as requiring medical treatment and as possibly either maiming or fatal, suggesting that they were both common, and known for frequently having serious and long-term effects.

Another form of direct reference to the medical profession is offered by the Mirror of Justices, c.1285-90, which makes reference to the responsibility and culpability of medical practitioners.[52] Firstly, in his discussion on the nature of homicide, the author makes a puzzling reference to certain 'perverse' [*fous*] physicians "who are guilty of homicide by causing the death of a man in prison". The inference of this passage seems to be that those who cause the death of those in prison either by causing them to linger there unnecessarily or by delaying their ordained duties, failing to give them the support they require, (failing to stand as oath-helpers or witnesses for them for example), wrongfully testifying against or condemning a man, or mistreating them excessively in prison, are guilty of homicide. The author states that "into this sin fall perverse jurors and in certain cases perverse physicians" .[53] It is tempting to interpret this as

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[49] Leges Henrici Primi, Cap.93,35-35a, p.298-9; The Laws of the Earliest English Kings, Alfred, Cap. 75, p.93

[50] Leges Henrici Primi, Cap. 93,28, pp.296-7

[51] ibid., Cap.93,24, p.296-7

[52] The culpability of medical practitioners will be dicussed, with reference to extant litigation, in the following chapter.

[53] Mirror of Justices, p.24

meaning that some were wrongfully sent to prison through the false medical testimony of certain physicians but impossible to prove with the information available to us. Unfortunately there are few precedents during this period for the consistent use of medical practitioners as expert witnesses. There are, of course, examples of individual occurrences, the earliest thus far found being in 1283 when a surgeon on the Isle of Wight was called in to determine whether a man wounded in an altercation between the retainers of the Countess of Aumale and the Abbot of Quarr would live after being wounded in the chest in order that it could be decided whether or not to retain his attackers in custody to face possible charges of murder.[54] However, it is more usual to find this use of physicians and surgeons in the borough and custumal courts in conjunction with the local guilds, and it cannot be said that there is any other form of reference to an official practice of using medical practitioners as expert witnesses. On the other hand, the author may infer that to abuse the position and knowledge given to them by their profession to procure the undeserved punishment and death of another, is a sin equal to homicide.

Secondly, in his discussion of the judgement of homicide, the author states

> And then again we must make distinctions as to other homicides: thus physicians, leeches, justices, witnesses, those who strike but do not slay, fools, madmen, fugitives. Physicians and surgeons being learned in their faculties and provably making lawful cures, and having clear consciences, so that in nothing have they failed their patients that to their art belongs if their patients die, are not

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[54] Case 3

> homicides nor mayhemers; but if they undertake to make a cure which they do not know how to bring to a successful end or, although they have such knowledge, they behave stupidly or negligently, as by applying heat instead of cold, or the reverse, or too little of the cure or if they do not apply due diligence, more especially in their cauterisations and amputations which are things that cannot be lawfully done save at the peril of the practitioners, then if their patients die or lose a limb, they are homicides or mayhemers. [55]

This taken at face value could provide wonderful insights into the legal position of medical practitioners in the case of fatally unsuccessful cures. The complaints postulated against physicians and surgeons by the author can all be illustrated by reference to malpractice cases studied. For example in 1350, a pardon was issued by the king to Thomas de Rasyn and his wife, Pernell, medical practitioners, dismissing charges of killing a man "through ignorance of their art". [56] The majority of the malpractice cases studied make an accusation of negligence on the part of the practitioner even if they do not specifically allege wrongful treatment as John Roper did in his suit against Matthew Rellesford, a London surgeon, in 1443. [57] However, as a source the Mirror of Justices must be treated with caution. The passages cited may derive from the the authors own imagination rather than being founded in recognised legal authorities. While the proposition that maimings and fatalities caused by ignorant and careless practitioners must be prevented appears a sound one, the author's assertions as to the culpability and responsibility of medical practitioners appears suspect,

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[55] Mirror of Justices, p.137
[56] Case 14
[57] Case 35

when compared with formal law codes and the evidence of contemporary records.

There is evidence that certain medical and surgical techniques were acknowledged in law as carrying certain risks, even that of death. The case of the death of William le Paumer, a London skinner, in 1278 due to careless bleeding is cited by Rawcliffe to illustrate this. He was adjudged to have collapsed and died as a result of careless bleeding, yet there is no mention of punitive measures against the practitioner who performed the fatal phlebotomy nor are they even identified. She also notes the exemption of practitioners of phlebotomy and cautery from charges of mayhem and murder in thirteenth-century Icelandic law codes. [58]

There are, however, legal cases involving the imputed misuse and negligent application of cautery such as that brought by William Forest against John Harwe, John Dalton and Simon Rolf in 1424 and, more commonly, negligence in the use of phlebotomy, as in the case of Richard Erdale *vs* John Barbour, but these are civil cases brought by the parties involved, not charges of mayhem which were a criminal matter.[59] However, agreements like that contracted between John Catlew and Alicia, wife of John Cartmell, which waived Catlew's responsibility in the event of Cartmell's death after an operation for the stone, suggest that there may be some practical, if not formal, grounding for the Mirror of Justices's stance as do the charges faced by Thomas de Rasyn and his wife Pernell above, and

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[58]Rawcliffe, Medicine and Society pp.65, 79 fn 28-29; I.MacDougall, "The Third Instrument of Medicine: Some Accounts of Surgery in Medieval Iceland" in Health, Disease and Healing in Medieval Culture, ed S.Campbell, B. Hall and D.Klausner (Toronto, 1992) 64; Memorials of London and London Life in the Thirteenth , Fourteenth and Fifteenth Centuries, ed. H.T.Riley (London, 1868), pp.14-5

[59] Case 34; Case 21

precautionary measures employed by the Guilds.[60] The author's assertions concerning amputations however, are unmatched elsewhere.

The value of the Mirror of Justices is that the author, acknowledged by Maitland, despite his other criticisms of the text, to be a learned man, and possibly identified as Andrew Horn, was a man not unacquainted with the civic legal processes of London. He had definite ideas about the responsibility and culpability of the medical profession and is shown to be conversant with at least some of the basic principles of medieval therapeusis and entertains certain concepts as to the dangers involved in the medical practices of his day in his text. One may be forgiven for suggesting that such opinions were not unique to the author and may offer an insight, however tenuous, into how the medieval medical profession was regarded by the urban, lay public.

The second area of consideration refers to matters which are discussed in these texts which have distinct medical connotations but are discussed without overt relation to medical practitioners. This subject may seem spurious, but there are several references in the texts to subjects such as abortion, contraception and even the odd discourse on physiology. Such references may, in some cases, be taken to echo popular conceptions of the day. Certainly within the texts themselves they are presented in terms of accepted fact.

Continuing on the theme of homicide raised by the Mirror of Justices, the Fleta has this to say on the subject of abortion,

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[60] Case 31; The London Surgeons' Guild decreed in 1435 that joint consultations must be taken on dangerous cases within four or five days, chiefly in order to protect themselves from charges of malpractice; T. Beck, The Cutting Edge:Early History of the Surgeons of London (London, 1974), p.132

> He too, in strictness is a homicide who has pressed upon a pregnant woman or has given her poison or has stuck her in order to procure an abortion or to prevent conception, if the foetus was formed and quickened, and similarly he who has given an accepted poison with the intention of preventing procreation or conception. A woman also commits homicide if by a potion or the like she destroys a quickened child in the womb. [61]

Its parent text Bracton, makes two declarations on the subject, "If one strikes a pregnant woman or gives her poison in order to procure an abortion, if the foetus is already formed or quickened, especially if it is quickened, he commits homicide", under the heading concerning the divisions and types of homicide, and " If anyone forcibly interferes with a woman's internal organs in order to produce abortion he is liable" in the discussion of breach of the peace and wounding, under the heading concerning castration.[62] Two Provisions made by Edward I (1272-1307) echo these declarations. [63] The pronouncements in both Bracton and Fleta supply information on the processes by which abortions were known to be procured during this period. By inference there were four: pressing upon the womb, violence, administering an abortifacient or poison, and interference with the internal organs; all in all a fairly distressing collection. [64] That the use of

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[61] Fleta, 2, Bk.1, Ch.23, pp.60-1

[62] Bracton, De Legibus, 2, p.341, 408

[63]"He who oppresses a pregnant woman, or gives her a poison, or delivers to her a blow [strong enough] so as to cause an abortion, or who gives to her something so she will not conceive, if the fetus is formed and animated, is guilty of homicide...Item; A woman commits homicide who so devastates an animated child through a drink of similar things in the stomach."; J.M.Riddle, Contraception and Abortion from the Ancient World to the Renaissance, (Harvard, 1994), p.140

[64] Rawcliffe refers to the practice of using a rolling pin on spreading waistlines to try and end an unwanted pregnancy which could well be the type of thing which is meant to be inferred by the description of pressing upon pregnant women which appears in Fleta.

violence was accepted in medieval England as a proven method of deliberately producing an abortion, to the point of appearing in one of the realm's foremost contemporary legal texts, is a fact to be deplored by the modern reader but is not as relevant to this discussion as are the last two methods cited, the use of drugs to procure abortions, and also to prevent conception, and the forceful interference with the female internal organs as cited by Bracton. This last method listed may refer to the 'pressing' in the Fleta or it may be a reference to something akin to a D and C. [65] The fact that it comes under a different category to the other methods suggests that it is the not the same process. Appearing as it does in a section dealing with castration and the loss of generative powers, it could possibly be inferred that such a procedure frequently had a comparable effect, an easily imaginable consequence if it was the latter. Interestingly, in Bracton mention is made of abortions being effected by men only, whereas in Fleta there is an addition concerning women who attempt to abort their unborn child themselves.

Despite the fact that such attempts were both unlawful, as demonstrated above, and also a sin in the eyes of the Church, there was widespread use of abortifacients and contraceptives during the Middle Ages as the Church's frequently repeated condemnations show. This was for practical reasons, such as the attempt to limit the size of the family, as much as for avoiding or getting rid of the results of illicit sex. [66] Midwives and female

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Manipulation and massage of the abdomen may also have been used to bring about abortion; Rawcliffe, Medicine and Society p.204

[65] Riddle notes that Hippocrates was accused by Tertullian of possessing and by implication using a surgical instrument designed to dismember the foetus but concentrates his studies on non surgical methods of abortion; Riddle, Contraception and Abortion, p.9

[66] The use of abortifacients to rid a pregnant woman of a dead child is not discussed in these texts. In most cases a quickened or animated foetus is specified. There was a concept of theraputic abortion whereby a child thought to be dead in the womb would be aborted to

practitioners were the main source of drugs and other methods for such purposes, another was medical texts, both classical and vernacular, which provided receipts for abortifacients, often in disguised form, both in oral and suppository form, and also remedies to promote menstruation (emmenagogues) and prevent conception. From such evidence and the continuing issue of prohibitions, both lay and ecclesiastical, it would appear that in lay society at least, there was a certain pragmatic acceptance of such things. [67] It would also appear that officially there was some leeway given on the matter. Both Bracton and Fleta specify a formed or quickened foetus, as do the provisions of Edward I, the term quickened referring to a stage of pregnancy when the child can be felt to move, implying that before this stage of pregnancy abortion is not counted as homicide. Rawcliffe cites a period of up to eighty days, as proposed by the medical profession, and accepted by the more flexible members of the clergy, before the foetus was said to be in possession of a human soul. This is in line with Aristotle's

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save the mother's life or abortion was recommended in the case of women who were unlikely to withstand labour. When advocating the use of iris root to cause abortion, in the case of unsucessful labour, a fourteenth century copy of Trotula says " ... when the woman is feeble and the child cannot come out, then it is better that the child be killed than the mother of the child should also die." It also provides a plaster to expel a dead child from the womb. William of Saliceto, c.1210, sought to avoid this eventuality by recognising the undesirability of overly young or weak women becoming pregnant and suggesting methods of abortion and contraception. He begins his chapter on contraceptives and abortifacients thus," Although this chapter may not be according to tha law nevertheless [it is necessary] for the ordinary course of medical science on account of the danger that comes to a woman on because of a dangerous risk of conceiving on account of her health, debilities, or the extremity of her youth". Avicenna, (980-1037), even cited the fear of death in childbirth as a reason for therapeutic abortion and contraception although later clerical copyists of his work have omitted this; B.Rowland, Medieval Woman's Guide to Health (London, 1981), pp.97, 121-3;
William of Saliceto, *Summa conservationes et curationis*, ch. 175; Riddle, Contraception and Abortion, p.136; A.McLaren, A History of Contraception (Oxford, 1990), p.123

[67] Riddle's book provides an interesting and wide ranging discussion on the subject of abortion and contraception, dealing with areas such as method, contemporary attitudes, sources and even actual effectiveness as shown by research. See Riddle, Contraception and Abortion

declaration of forty days in the case of a male and ninety in the case of a female foetus, and it seems to be that an attempt at abortion during this period was looked upon less severely .[68]

On the subject of conception, both the Mirror of Justices and Britton include in their discussion of rape an assertion of the popular conception that no woman who had conceived after rape could legally bring charges of rape "because no woman can conceive if she does not consent" .[69] This view arose because it was considered the emission of what the medical profession identified as 'female semen', as well as that from the male was necessary for conception, and this was supposed, as in the case of the male, to issue as a result of pleasure and thus pregnancy was logically the result of a mutually enjoyable union. [70] It is used as a defence against such a charge in the Mirror of Justices. [71]

Finally, in the texts studied there arise descriptions of certain events and procedures that would seem to us to involve as a prerequisite the presence and involvement of some form of medical practitioner, but where lay officials were used instead. These include the examination of those appealing for essoins of sickness, the testing of those thought to be of unsound mind, the investigation of alleged cases of leprosy, examination of wounds and dead bodies and lastly, the investigation of suppostitious births. In most of these cases it may be considered that the use of a medical practitioner and their expertise and knowledge would be an advantage, but

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[68] ibid., p.21; For various modern interpretations see Riddle ,Contraception and Abortion p.177, fn.32; Rawcliffe, Medicine and Society p.203

[69] Britton, i, ch xxiv; 7, p.114

[70] "And as rennet curdles milk and the two make cheese, so both the sperms of man and woman maketh the generation of the embryo." Lanfranc, Science of Cirurgie, p.21

[71] Mirror of Justices, p.103

in the main these procedures were carried out by royal officials such as coroners and knights.

The use of knights rather than physicians and surgeons in essoins of sickness and bed-sickness, (*essoins de malum lecti*), a procedure by which a participant in a court case could avoid making an appearance by taking to his bed and claiming ill-health, is stated in Fleta, and Glanville.[72]

Fleta describes the process of the essoin in some detail, including both the behaviour expected of the knights sent to view the sick man, and the sick man himself. [73] These show that there were certain expectations and criteria held concerning illness by those who administered the legal system, and also that measures had to be taken to avoid abuses of the system, i.e. the strictures placed on the sick man's behaviour and movements which he had to respect or else he would be liable to arrest.[74]

Glanville provides the writ for appointing knights to ascertain bed-sickness and discusses other possibilities such as the suitor falling ill in the town where the case is to be heard. [75] There is no mention of physicians or surgeons at any point; the knights are the sole judges of the man's illness. It is perhaps not unrealistic to suggest that, should there be a physician or surgeon in attendance upon the sick man, then the knights' enquiries would be directed to them, but there is no official provision made for an expert or informed opinion. This could reflect the unavailability of medical practitioners for such viewings in some areas; certainly there are cases of

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72 Glanville, Tractatus De Legibus I,18-20, pp.11-12; Fleta, 3, Bk. 6, ch. 10 pp.126-132

73 Fleta, 3, Bk 6, ch 10, p126

74 "The gravely ill man ought to keep himself continually in a gravely ill condition by being unbelted and unshod and without trousers and naked in bed and if he should sometimes put on some clothes, yet he ought not to go out of the room or the house in which he was viewed."ibid.,pp.131, 129

75 Glanville, Tractatus De Legibus, I, 19-20, pp.11, fn. 1, 11-12

practitioners taking part in these viewings. In 1359 John of Cornhull, a surgeon, and John Paladyn, a royal surgeon, were part of a deputation sent to see whether Denis de Morbeck, a knight, was genuinely too ill to attend court, but such occurrences are decidedly in the minority. [76] The status of at least one of the surgeons involved suggests that the king was involved and that this was an unusually important court case.

Knights were also sent to ascertain the mental state of those who were thought to be of unsound mind. Bracton supplies a writ to this effect, however, the emphasis on these proceedings is one of dominion. [77]

Protection of the mentally ill, their lands and their families was one of the duties of the king. The thirteenth-century document the Prerogativa Regis sets out the Crown's position concerning the mentally ill and disabled in its discussion of the royal rights and responsibilities.[78] It divides such people into two categories, natural fools and those labelled *non compos mentis*, into which category fall those with whom this writ is concerned. The former are those with congenital, intellectual subnormalities, whereas the latter are those whose conditions developed after birth and are subject to periods of lucidity. Their status was determined by inquiries ordered by writ. Those considered to be *non compos mentis* were assessed by questioning.

The case of Emma Beston of Bishop's Lynn provides an example of the form of interrogation. In 1383 it was pronounced that having been

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[76]Case 16

[77]The writ and proceedings centre around a claim by the heir of the examinee that, whilst of unsound mind, he has granted out lands unwisely, in other words to the heir's disherison, or has allowed others to take or grant land by fraud because of his condition; Bracton, De Legibus, 2, pp.60-1

[78] R.Neugebager, "Treatment Of The Mentally Ill In Medieval And Early Modern England : A Reappraisal", Journal of the History of the Behavioural Sciences, 14 (1978), 159-60

overtaken by evil spirits four years previously she had lost her wits and thus was declared incapable of managing her affairs and given into the guardianship of a kinsman. Following several appeals to the contrary, she was examined by four lawyers (not knights in this case) in Lincoln in July 1383.

The lawyers questioned her systematically concerning her awareness of everyday matters such as where she lived, where she was at that time, the number and names of the days of the week, whether she was married and had children and simple questions concerning money. These questions encompass matters which one would be expected to need to know in order to go about one's daily business, showing that some thought had been given to the style of this examination. Eventually, after further examination and inspection, it was declared that she had " neither sense nor memory nor sufficient intelligence to manage herself, her lands or her goods". [79]

It is plain that there is a clear distinction being made both as to the type of disability, its effect on the competency of the person concerned and the type of protection and care required, i.e. full-time in the case of natural fool; in the case of the *non compos mentis* merely until they become lucid again. It is not surprising, however, that with little to gain from such cases and few facilities to deal with them, the guardianship of such idiots and lunatics and their families was increasingly granted out by the Crown to private persons.[80]

Knights were not the only laymen who were apparently thus employed in areas that would seem to touch upon medical opinion. In cases of assault,

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[79] Calendar of Inquisitions Miscellaneous, 4, pp125-6, no.227; C.P.R. 1381-85, pp212, 305, 351, 471

[80] ibid., p162

rape and/or death at a local jurisdictional level, coroners as local royal officials were required, and amongst their other duties, they had to examine and record the size, position, severity and cause of wounds, examine the bodies and clothing of those women claiming to have been raped, and to view the bodies of those found dead, in order that they might bear witness on the events, at a later date, when either the wounds had healed or the body had been buried. [81] Fleta deals at length with the function and responsibilities of the coroner, including several passages on the viewing of those injured and dead. [82] So too does Britton and the Mirror of Justices. [83]

Thus once again there is no official provision made for an informed medical opinion, but whether because of the lack of its availability or because the coroners were considered proficient, is not clear. It can be presumed however, that experience would eventually give the coroners an understanding of the severity and prospects of woundings and other such occurrences which they might encounter in the course of their work and that in the case of a living victim there might, as in the case of the essoins of sickness, be a medical practitioner in attendance. The thoroughness of some coroners' investigations can be attested to by reading their reports as shown by this account of the wounds received by John of Brettville in 1271, at the hands of Simon, son of Roger of Cainhoe :

> ....the said Simon came there as a felon and pursued John....and assaulted him with premeditated assault and against the kings peace.....and struck him wickedly and feloniously with a certain sword of iron and steel on the top of the head on the left side between

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[81] For a fuller discussion on the office and duties of coroners see R.F.Hunnisett, The Medieval Coroner (Cambridge, 1961)

[82] Fleta, 2, Bk. I, Ch.25, pp.64-6

[83] Britton, 1, Ch.2; 3, p.9; ibid., 1 Ch.2;17, p.17; Mirror of Justices, p.32

> the parting of the hair and the ear; he thus inflicted upon him a big wound which was five inches long, three inches wide, and which extended downwards as far as the brain, so that thirteen pieces of bone were extracted from the wound. Also Simon, the felon, wickedly, feloniously and against the king's peace, again stuck the said John with the said sword under the hand on the little finger (called the auricular finger) of the left hand; and he cut the sinews of the said finger so that he was maimed; and [he struck him] on another finger (next to the said finger) called the ringfinger so that he broke the bones of the said finger; thus he was maimed in both those fingers. His malice did not stop there, but as a felon he again struck the said John many bloodless blows on the right side of the head with the flat of his sword wickedly, feloniously, with premeditated assault, and against the king's peace, so that the entire top of his head was excoriated and swelled and he lost the hearing on the left side. [84]

This account shows keen observation, attention to detail, and an understanding of the consequence of various wounds on the part of the coroner. The precise measurements of the wounds may be linked with the matter of compensation discussed above whereby the wounds are measured and compensation given in amounts by the inch.

The investigation of suppostitous birth is also a case of the use of laymen, or rather in this case laywomen, in a medical capacity. Suppostitious birth is declared and investigated in two sets of circumstances. Firstly, when a widow of a landholder, previously possessing no direct heirs, purports to be pregnant with a possible direct heir to the disherison of the existing heir

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[84] Select Cases-Coroners' Rolls, pp.21-22

investigation was made. Secondly, in the case of either a child whose parentage is questioned due to confusion about the presence of the father in the area at the supposed time of conception, or to some impediment such as impotence on his part, or to suspicion of the substitution of another child in the event of the death of the legitimate heir, investigation followed. As can be imagined, all of these circumstances would be profoundly disturbing to a society which laid such importance on primogeniture and direct line inheritance, not to mention distressing to those who stood to lose by such occurrences, such as existing heirs and the Crown (in the case of there being no extant heirs).

Of the texts studied, Bracton introduces the concept and provides the relevant writs, while Fleta expands on the subject. [85] Both these texts provide lengthy and in-depth passages on the subject, perhaps indicating the concern that was felt on this matter. Bracton's Notebook provides several examples of the writs given in Bracton, in practice. [86]

He cites the case of Muriel, the widow of William de Melton and Peter Constable of Melton, her brother-in-law, which illustrates the procedure laid down by Bracton very well. [87] This case concerns the dispute between Peter and Muriel over the inheritance left by William de Melton. William being dead, Peter, the next in line (there being no closer heir), complained in 1220, that after the death of her husband, Muriel claimed that she was pregnant with a possible heir. For such a situation Bracton provides a collection of

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[85] Bracton, De Legibus, 2, pp.201-7; Fleta, 2, bk.1, ch.15, pp31-4

[86] Bracton's Notebook,, 1, plea nos. 198,128; ibid., 3, plea no. 137

[87] Bracton's Notebook, 3, plea. 1503, pp.417-8 It is discussed in the introduction to Select Cases-Without Writ, pp.cliii-iv. Other similar cases include those of Matilda, wife of Richard of *Thorniea*, (Thornley?), Agnes, wife of Richard of Tours, Leticia, wife of William de *Caamu,* (Caynes?),and Johanna, wife of Ade de Aldham. Bractons Notebook, ii, plea no. 128; p.112, plea 137; pp.116-7, plea 198; pp.161-2 See also Rotuli Litterarum Clausarum, 1, plea 435b; Bracton, De Legibus, 2, p.202, n.6

four writs, a writ for viewing a woman to discover whether she is pregnant or not, a writ ordering the constable to receive her into his castle, a writ at the complaint of the heir that she be examined, and a writ that the sheriff cause her to come before the justices at Westminster. [88] He also provides a writ commanding, that in the event of the woman being proved not to be pregnant, the lord from whom the deceased man held his lands should receive the homage of the true heir. [89] This last writ is the only one of the collection cited by Fleta .[90]

Reference to examination of the supposedly pregnant woman is made repeatedly throughout all the writs cited and throughout the discussion in Fleta, yet no mention is made of the involvement of any kind of medical practitioner. It is no surprise that the texts and writs do not specify physicians or surgeons as they did not usually play a 'hands on' role in childbirth, this not being deemed proper. However, there is no specific mention made of midwives who would be expected to be the natural authority in such cases. Instead the texts call for diligent examination of the breasts and abdomen and pertinent questioning of the woman by "lawful and discreet women" in the presence of "lawful and discreet knights". [91] It is possible, if not probable, that these "lawful and discreet women" would include midwives but whether a knowledge of childbirth and pregnancy on the part of all women was supposed by these texts or whether the unavailability of midwives was taken into consideration is not clear. It

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[88]Bracton, De Legibus, 2, pp.201-4 The first writ directing the examination of the woman provided by Bracton does not, according to Richardson and Sayles, appear in any register of writs but the second one doing so can be found under the title *breve de ventre inspiciendo* in later Registers of Writs. See Select Cases-Without Writ, pp.cliii-iv; Early Registers Of Writs, ed. E.de Haas and G.D.G.Hall Selden Soc, 87 (1970) no.139, p.75, no.754, p.285

[89]Bracton, De Legibus, 2, p.207

[90] Fleta, p.33

[91] Bracton, De Legibus, 2, pp.202,203; Fleta, pp.31,33

should also be noted that knights are once more a part of the process, although more as witnesses to the procedure and its results than the more active part they seem to play above.

The procedure as set out by Bracton and Fleta shows that much thought has gone into this issue and every eventuality is prepared for. Firstly, the woman was examined by the aforesaid "lawful and discreet women". If they believed she was pregnant, they questioned her as to the date of conception and probable delivery. If they found her not to be pregnant she would be summoned for fraud and the existing heir would inherit. The woman found to be pregnant by the examiners was placed in custody in a castle until the birth, she was not allowed any women or maids around her who were pregnant and who thus might aid her in a deception, and the kinswomen of the plaintiff might visit her and examine her when they wished. As to the length of her custody, this depended on the date computed from the estimated time of conception or the last feasible date after the death of her husband. Bracton seems undecided on the subject of late deliveries.[92]

However, the definition of what will be accepted as a legitimate heir is made very clear. Monsters or prodigies will not be allowed to inherit but infants with only one more or one less digit on each hand and normal in all other ways will be admitted .[93] Finally, if the allotted period elapsed and no child was forthcoming, the existing heir inherited.

These measures were also employed in the event of a living husband where there was serious cause of doubt that he was the father, through

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[92] "Some say, though others are of a contrary opinion, that the woman cannot exceed the gestation period by a single day, even where the issue dies *in utero* or turns into a monster, the risk falling on the mother, but may anticipate the time of birth and deliver prematurely." Bracton, De Legibus, 2, p.203

[93] ibid., p.204

some provable cause, such as his impotence or his absence at the time of conception. Otherwise, the child of a cohabiting couple was assumed to be legitimate. [94]

In the case of Peter Constable of Melton and Muriel, the wife of William de Melton cited by Bracton, the demand for an examination to be made came from Muriel herself, not once but twice. Having been examined by fourteen London matrons, she was declared to be pregnant and contrary to the procedure of the writs was told that she could go until another plaint was brought against her.[95] Peter then brought another plaint against her and she was interrogated as to when she had last seen her husband and when he had died. Although Peter concurred with her answers, he requested that she be kept in custody and she was committed to the keeping of the Mayor of London under the supervision of four London women. Muriel did not deliver during the gestation period and was again summoned to court where she declared that the birth was delayed and she was awaiting God's grace. Eventually, after forty-eight weeks, she appeared before the court and admitted she was not pregnant but had felt "so heavy with disease that she believed herself with child". [96] In the face of this Peter continued to accuse her of fraud and asked that she forfeit her dowry despite the fact,

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[94] There is no procedure in these texts for assessing or proving impotence. However impotence was accepted as a reason for divorce and procedures for proving the condition did exist in the ecclesiastical courts. These included medical examinations and experiments usually conducted by experienced matrons. Murray discusses these and other methods and Brundage provides a minature depicting just such an examination. J.Murray, "On the origins and role of 'wise women' in causes for annulment on the grounds of male impotence", Journal of Medieval History, 6 (1990), 235-249; J.A.Brundage, Law, Sex and Christian Society in Medieval Europe (Chicago, 1987), plate 14

[95] There are cases of women being placed in custody until the birth,. In 1222 Agnes, the wife of Richard of Tours was placed in custody in Oxford under the guardianship of Ralph de Bray to await the birth of her child. Bracton's Notebook, 2, plea no.137, pp.116-7

[96] Select Cases-Without Writ, p.clv

that to all appearances, Muriel seems to have genuinely believed in her claim.

One area where the involvement of medical practitioners approaches what we might expect is in the inspection and diagnosis of suspected cases of leprosy. In the Middle Ages leprosy was a disease regarded with revulsion and fear as well as one carrying a certain moral and religious stigma. [97] To be diagnosed with leprosy was to be condemned to a miserable existence on the outskirts of society, legally dead and shunned by all except those similarly afflicted. Those who were not diagnosed as leprous but were not cleared completely were placed under virtual house arrest for observation to see if the suspected symptoms would appear. Thus a diagnosis of leprosy was indeed a fate to be dreaded, and it is no great surprise that not all potential sufferers came forward of their own accord. Usually, suspected cases of leprosy were reported by their communities who, by the application for a writ of *De leproso amovendo* for their removal, set into motion the procedure for the inspection, diagnosis and eventual separation of the leper from the community. This separation was a ritualised procedure, known as *separatio leprosorum.* [98]

The diagnosis of leprosy in the Middle Ages is widely held to have been a less than discriminate affair. Disease of the skin would have been prevalent due to factors such as diet, living conditions and contemporary concepts of hygiene, and it is believed that many and various persistant skin diseases

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[97] For the peculiar duality of the medieval view of leprosy, which combined revulsion for the disease's horrific nature and the life its sufferers were forced to lead, with a religious conviction that the appearance of the disease was earthly punishment for the sufferer's sins, a spotty skin reflected a spotty soul, and the view that the degree of suffering in this world guaranteed spiritual salvation in the next see S.N.Brody, The Disease of the Soul: Leprosy in Medieval Literature (New York, 1974), pp.61, 102-3

[98] P. Richards, The Medieval Leper and His Northern Heirs (Cambridge, 1977), chapters 5-6

and conditions were diagnosed as leprosy and their sufferers, probably erroneously, condemned to the unfortunate and marginal existence of the leper. [99] The case of John Clotes and John Luter in 1408 demonstrates the confusion that could arise, whether intentionally or otherwise in cases of leprosy. [100] Clotes claimed that Luter promised to cure him of leprosy for a sizable amount of precious items, whereas Luter claims that Clotes came to him saying that he had *salsefleume*, a curable skin disease. However, Luke Demaitre's study of medieval medical texts on this subject indicates a surprising degree of precision. [101] Some of the symptoms described such as local loss of sensation and increased stickiness or grittiness of blood are accurate. However, he concurs with the medical historian, Karl Sudhoff, that many of the diagnostic techniques are of little value and based on superstition. He states that these texts also indicate that medical practitioners were aware of the differences between incipient and advanced leprosy and were wary of signs they knew to be misleading. [102] Bernard de Gordon is quoted as agonising over an uncertain diagnosis of leprosy where the sufferer had no facial lesions as was considered nescessary by contemporary medical tradition.

> I wanted to absolve him, and I repeatedly asked him whether any sign had appeared in his face. He had remained like this for quite twenty years and he still lives with that ugliness of the extremities but without anything showing in the face. Hence I guess, with the conjecture closest to the truth, that it was not leprosy; nor does it

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[99] Both Richards and Brody repeatedly draw vivid pictures of the wretchedness of the leper's existence in their work. See above

[100] Case 33

[101] L.Demaitre, "The Description of Leprosy and Diagnosis of Leprosy by Fourteenth-Century Physicians", B.H.M., 59 (1985), 327-4

[102] ibid., 342-3

> seem possible that he would have lasted so long without his face being disfigured. And therefore, even though I once thought differently, now that I have laboured diligently in this work, I am of another opinion and I would no longer judge him leprous. However, God knows the truth, I do not know. [103]

This attitude reflects well on medical practitioners and also illustrates that contemporary medical texts seem to assume that examinations would be carried out by physicians and surgeons. However, because of the scarcity of such practitioners it was far more common for the examination of lepers to be carried out by laymen, civic authorities, clerics and even the inmates of leper-houses themselves. Brody alleges that the inclusion of medical practitioners in these lay examinatory bodies was increasingly common from the fourteenth century, in Europe at least, but lay participation is still recorded even where there were medical committees. [104] Richards cites the case of Peter de Nutle, mayor of Winchester in the early fourteenth century, who refuted claims that he was leprous by undergoing examination by two examining bodies, one composed of medical practitioners and one of laymen.[105]

The medieval diagnosis of leprosy was based on a physical examination and a series of questions concerning the patient's diet, lifestyle and whether he had had any previous contact with lepers. This examination could be very thorough, as the case of Johanna Nightingale of Brentwood in 1468 demonstrates.[106] Johanna was accused of being leprous by her neighbours and of refusing to leave the community. The community petitioned for her

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[103] ibid., 341
[104] Brody, The Disease of the Soul, p.63
[105] Richards, The Medieval Leper, p.40
[106] C.C.R.,1468-76, pp.30-1

removal by a writ of *De leproso amovendo*. This was granted provided that she be examined by the sheriff of Essex and "certain discreet and loyal men of the county of the aforesaid Johanna in order to obtain a better knowledge of her disease", and, if she was indeed leprous, to effect her separation from society. At this point the Chancellor stepped in and determined that Johanna be examined not by this lay committee but by one comprising of William Hatteclyf, Roger Marshall and Dominus de Serego, three physicians employed by the Crown. Why this occurred is not certain, though Richards suggests it was due to the rarity of the case, claiming that leprosy was on the decline in England by this point, or more whimsically, that the Chancellor was alarmed by the unprofessional nature of the committee. [107]

Whatever the reason, the physicians ordered to examine Johanna did so in great detail. Their report records that they "touched and handled her and made mature, diligent and proper investigation whether the symptoms indicative of this disease were in her or not". The committee examined her not only for the twenty-five most apparent signs of general leprosy but also the forty distinctive signs of the four types of leprosy, *alopicia*, *tiria*, *leonina* and *elephantia* and found her to be free from all signs of the disease. This indicates a commendable thoroughness and concern for the patient on the part of the doctors. They themselves note that the absence of the twenty-five general signs would have been enough to release her from suspicion. However, this case is an exception. Circumstances dictated that few putative lepers would have enjoyed such medical attention. Once again the scarcity of medical practitioners resulted in their role devolving upon the layman.

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[107] Richards, The Medieval Leper, p.40

Though the contribution of these texts and treatises towards this research is less than might be hoped for, there are however, many things of value to be found within them and they must not be discounted. There are few if any reliable references to the practitioner's responsibility and culpability in the eyes of the law, however, this area is richly dealt with by guild regulations and surviving litigation. The value of texts is that they are informative in several other areas which the aforementioned source material does not cover. Much can be inferred on the subject of methods of abortion for example, and also about the prognosis for certain types of wounds such as leg and neck injuries and also their frequency. Such wounds would surely not be discussed in detail if they did not arise often enough to be commonplace and their possible effects well-known.

Though references to medical practitioners may be sparse, there are many references to laymen and women acting in their stead as part of examining bodies concerned with medical matters such as pregnancy, illness and mental health. The methods and procedures recommended to these lay examiners are in line with contemporary medical methods of examination and observation. Coroners, for example, are encouraged to observe in great detail the length and depth of wounds, numbers of bone fragments, probable cause and significant incidentals, such as ripped clothing and bloodstains in cases of rape. The passages dealing with the examination of pregnant women are well informed and there are several medical turns of phrase and evidence of medical learning contained within some of the texts suggesting in some cases an unwarranted familiarity with of medical matters.

This use of laymen and women in these quasi medical roles must surely reflect on the paucity of medical practitioners to fulfil these roles, despite

the fact that the earlier law texts seem by inference to assume that medical treatment will be available where needed. It is demonstrated here that where medical practitioners were not used in these circumstances, for whatever reason, these contemporary legal texts seek to ensure that those who were replacing them were informed as to what was expected and required, and represent an attempt to provide the next best thing, the informed opinion of a law-worthy knight.

CHAPTER THREE

DOCTORS AND THE LAW IN PRACTICE.

Medieval litigants, providing their purses could stretch to it, had access to a plethora of legal recourse which encompassed a variety of procedures and remedies. These ranged from the local customal courts to the strictly formal nature of the royal common law courts, to the court of Chancery, founded on the concept of a court of conscience and the beginnings of equity and to private arbitration. [108] This variety in itself was testimony to the growth and developement of English law in the period frrom the thirteenth to the fifteenth-centuries. It offered increased access to the courts for a wider spectrum of English society and is reflected in the resulting increase in litigation during this period.

An overview of the evidence which the cases studied provides will serve to illustrate these forums of the law and its mechanisms while also illustrating the legal grounds whereby the dissatisfied patient brought action against medical practitioners and surgeons and thus show how the medical profession came face to face with the law in practice.

Cases heard under communal law procedure.

Seven cases in the database are recorded as having been heard in the communal courts. [109] These courts consisted of the hundred, shire and borough courts. They were organs not merely of justice but administration

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[108] For law and legal procedures in detail see J.Hudson, The Formation of the English Common Law (London, 1996); J.H.Baker, An Introduction to English Legal History 3rd ed. (London, 1990); J.H.Baker and S.F.C.Milsom, Sources of English Legal History; Private Law To 1750 (London, 1986); S.F.C.Milsom, Historical Foundations of the Common Law (London, 1969); F.Pollock and F.W.Maitland, The History of English Law Before The Time of Edward I, 2nd ed., 2 vols, (Cambridge, 1968); A. Harding , The Law Courts of Medieval England, (London, 1973)

[109] Cases 4, 9, 20, 21, 23, 26, and 31

and local government. These courts enforced precedented local customs, customary law, rather than a uniform legal code such as the developing common law. The main procedures used in these courts were those of compurgation and trial by ordeal. [110] Penalties issued by these courts included fines (fixed and graded on a scale according to the injury or crime), public humiliation, death, or much more commonly mutilation and imprisonment. [111]

The case of John Barbour and Richard Erdale, 1365, and John Frestone and Stephen Taylor, 1374-5, were both brought before the borough court of Colchester. [112] The first case was that of a dissatisfied patient, Richard Erdale who sought compensation from John Barbour whom he accused of causing the loss of his arm by careless bleeding. The second case by contrast was brought by John Frestone, a Colchester physician, who repeatedly attempted to get satisfaction of a debt owed to him by Stephen Taylor for treatment of his wife's condition of *colico passio*.

Cases of illicit practice and charlatanism also appear in another communal court, that of the mayor's court of London. In 1322 Roger Clerk was brought before this court for selling parchment, with a supposed charm written upon it, to Roger atte Hache as a cure for his wife's ailments. [113] However, there are other cases of interaction between these courts which do not include a direct grievance but deal more with contracts which had been made between doctors and their patients concerning treatment. Alicia, wife of John of Cartmell, undertook before the mayor's court in York not to sue

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[110]Hudson, The Formation of the English Common Law, pp.10, 72-7, 176; R.Bartlett, Trial By Fire and Water: the Medieval Judicial Ordeal (Oxford,1986)

[111] Cases 26, 12, 32 and 1

[112]Cases 21 and 23

[113] Case 26

John Catlew, a barber surgeon, should his operation for the stone on her husband be unsuccessful. [114] Physicians and surgeons appear before the mayor's court to provide expert testimony as in the case of the assault on Giles Pykeman in London in 1365 when several surgeons, including Adam Rous a royal surgeon, testified before the mayor's court as to the likelihood of Pikeman's ensuing demise. [115]

Also arising in the boroughs were the courts of fair and market. [116] These courts were surprisingly speedy in terms of medieval justice. Justice could be done within hours and the courts could run from day to day to finish a case. Presided over by merchants, the jurisdiction of such courts covered pleas of breach of contract, actions of trespass and could even extend to all issues except those involving land arising in minor cases within and without the fair. In 1288 for example, John, son of John of Eltisely brought a case against Roger Barber at the Fair Court of St Ives concerning breach of contract and the failure of a supposed cure for baldness, Roger had applied plasters to John's head for two days and then left the area. He was refunded the 9d he had paid as fee and awarded half a mark in compensation. [117]

The case of Alice Stockynge and John of Cornhill appears in the shire court in 1320. [118] The shire court and sheriff were also channels for royal justice and increasingly later on, the common law. By use of certain viscontiel (shrieval) writs, usually the writ *justicies*, greater jurisdiction

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[114] Case 31

[115] Case 20; The use of the medical profession as a source of expert advice and testimony by the medieval legal system is not as prevalent as might be expected and will be discussed more fully later.

[116] Harding , The Law Courts of Medieval England, pp. 41-43

[117] Case 4

[118] Case 9. See the section on trespass below for futher discussion of this case.

could be conferred upon a sheriff and his court. [119] The shire court proceedings were also taken over at certain times by the justices in eyre during the twelfth century and later by the justices in assize.

Cases heard under common law procedures.

By far the largest proportion of legal cases studied has been found within the records of the courts of the common law. Such cases include attempted murder, failure to perform a promised cure, negligence, debt and with holding evidence on cause of death. These cases appear in a variety of courts, those of the eyres, the King's Bench, the Exchequer, the Court of Common Pleas (or Common Bench) and Chancery, which arose from the thirteenth century onwards. [120]

The procedure of these courts, differs from that of the communal courts in three main areas; their use of a single body of law and precedent set down by the king and the curia regis, the use of preformatted, written instructions and procedures which were known as writs, and of the jury system rather than the impractical (given the increasing centralisation of the courts and the lengthiness of suits) methods of compurgation and ordeal. [121] The justices presiding over these courts played an active part in the actual process of the court. They listened to the arguments presented by the litigants and their representatives, directed the line of questioning, even occasionally putting forward their own questions, before finally giving judgement. [122]

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[119] See Baker for an example of the writ *justices* as used to delegate the settlement of a mill suit to the local sheriff; Baker, English Legal History, pp.614-5

[120] Harding , The Law Courts of Medieval England, pp.74-80

[121] Baker, English Legal History pp.84-96; Milsom, Historical Foundations, p.359-65

[122] Paul Brand's studies of the Plea Rolls and Year Books indicate that there was usually one justice , and no more than three, sitting on the Common Bench at a time and between

The case of Masters John of Hexham and his brother Semann regarding an overdose of pills in1276, an anonymous case concerning mutilation of a hand in 1312, another anonymous case concerning the loss of an eye in 1329, the case of Thomas the leech, Master Adam of Suthwyk and John the Warner in 1330, concerning breach of contract, and that of Thomas de Rasyn, his wife and John Panyers in 1350, concerning the death of the latter, are all heard in the eyre courts. [123] Every kind of offence and suit could and did come under the aegis of the justices in eyre and in the eyre courts we find not only suits against physicians charged with civil charges such as negligence and nonfulfillment of contract, as in the first four cases cited, but also criminal charges of causing death. In the case of Thomas de Rasyn and his wife this is attributed to their ignorance of the art of medicine, [124], but Simon the monk, a cleric and physician who under the pretext of treating his lord's wife had 'unseemly dealings' with her is charged with attempted murder, having plotted to kill her husband. [125]

The majority of the cases heard under common law procedure were heard in the increasingly centralised courts of Common Pleas and the King's Bench. The cases of John West of Leicester and Ralph Fryday, concerning the putrefacation of Fryday's broken arm following West's treatment of it and the dispute between Simon Bredon and Gerald Rothanis concerning an anuuity, both in 1364, are heard in the court of Common Pleas.[126] So too are those of Simon Barber and John Bittern, concerning the dangerous weakening of Bittern by careless bleeding in 1384, and of Matthew

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one and four in the itinerant courts. "Plea Rolls - Judges, Justices And Litigants", A paper given by Paul Brand at a seminar at St Andrews University in April 1996

[123] Cases 1, 7, 11, 12 and 14

[124] Case 14

[125] Justices In Eyre, Yorkshire pp.377-8

[126] Cases 18 and 19

Rillesford and the Prior of Guisborough, regarding the Prior's allegations of negligent treatment. [127] These are all cases of negligence and trepass except for that of Simon Bredon and Gerald Rothanis which is a case concerning the alleged non-payment of an annuity and a counter claim of the nonfufillment of the contract. [128] However, only this case and the case of John West and Ralph Fryday remain in this court, the other two cases become subject to private arbitration as will be discussed later.

Four of the cases in the court of the King's Bench are of trespass and malpractice. In 1364 Roger Rushenden is accused of causing Mariot, wife of John Broadmeadow to lose her hand. John Swanlond is likewise accused of maiming the hand of Agnes, wife of John Stratton in 1373. [129] In 1386 Henry Thorne of South Petherton is accused of negligent treatment of John Russell of Shepton's injured shin bone, and in 1388 Thomas Butolf failed to cure Robert de Skyrne of ringworm. [130] Of the other two, one, Lewis Lombard and Thomas Birchester in 1390, cites malpractice only in the case of a cure of an unspecified illlness, and the other, John Luter and John Clotes of Behemond in 1408, cites malpractice and fraud concerning Luter's apparent promise to cure Clotes of leprosy. [131]

Cases heard in the court of Chancery.

There are nine cases in the database which illustrate the working of the court of Chancery. These are the cases of John West and Ralph Fryday in 1364, Eric de Vedica and Alice, wife of William Stede in 1485, Peter Blank

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[127] Cases 27 and 35
[128] Case 19
[129] Cases 17 and 22
[130] Cases 28 and 29
[131] Cases 30 and 33

and Simon Lynde in c.1492, Master John Cokkes, John Barbour and Robert Beauchamp in c.1493, William Parouns and William Robynson also in c.1493, Jasper Ryamart and Thomlyson in c.1504, John Brown and John Dobson and Balthazar de Graceys and Alexander Martin both in c.1515, and John Conyers and Giles Polliver in c.1518. [132] All bar three of these cases concern the payment or withholding of fees in form or or other. [133] Of the others, Peter Blank and Simon Lynde were involved in a dispute over the treatment of Lynde's child's eye. [134] The case of Ralph Fryday and John West appears above in the discussion of cases before the court of Common Pleas, Fryday brought the case before Chancery after his failure to get justice in the former court. [135] Lastly Robert Beauchamp, with the aid of Master John Cokkes and John Barbour, wished to prove his innocence in a case of death by poison. [136]

Unlike the other courts that of Chancery was a 'court of conscience' where defendants would be persuaded or coerced into the action that good conscience dictated was necessary in the circumstances of the case. Appeals for writs of *certiorari* to remove cases to Chancery frequently make reference to this factor, Peter Blank's appeal to the Chancery for such a writ concerning his case of alleged failure of cure ends " Wherof it may please your sayd grace the promises considered to graunt a certoare to be dyrected [to the] shireffs commandyng them by the same to certfy the sayd accion befor the kyng in his chancery there to be examined and determyned according to constience". [137]

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[132] Cases 18, 39, 40, 41, 42, 43, 44, 45 and 46
[133] Cases 39,42, 43 44, 45 and 46
[134] Case 40
[135] Case 18
[136] Case 41
[137] Case 40

There was no necessity for expensive original writs to bring the case before Chancery, this was done by informal complaints, by bill or orally. The writ of *sub poena* was used to open the proceedings of this court which were not subject to the dictates of the common law. The court assembled evidence via interrogation and written depositions until it was considered that there was enough to take action on without having to consider the restrictions imposed by the common-law. The result of this was that the court of Chancery was a means to fast and inexpensive justice for those such as the poorer members of society and those unable to find an unbiased court in their locality. Ralph Fryday whose broken arm John West of Leicester failed, apparently maliciously, to cure, wishes his case to be transferred from the court of Common Pleas to Chancery in 1364 because he "cannot have execution nor any remedy at [common] law for this misdeed so done by colour of cure if he be not aided in this way because of the great maintenance against the said suppliant in these parts". [138]

Trepass and the use of writs.

Cases were brought before the common law courts by means of writs (*breve* or brief) purchased by the suitor from the Chancery. The most prolific of these writs was that of trepass, as can be seen above it appears in the majority of the cases studied. The writ of trepass came into being in the first quarter of the thirteenth century. [139] It grew out of the appeal of felony and in reality covers a multiplicity of writs and offences. Among the offences covered by the mantle of trespass were trespass on another's land, claims for damages from personal assault, defamation, fraud, negligence and breach of

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[138] Case 18

[139] Harding, The Law Courts of Medieval England, pp.76-77

contract, all charges which, with exception of the first, appear in the cases studied concerning medical practitioners. Under the charge of trespass against the King's Peace these injuries and offences could be brought before the royal courts which had previously been excluded from the lucrative field of civil litigation.

Trepass was not only the province of the royal courts. The charge of trespass became so prolific that in 1278 the eighth clause of the Statute of Gloucester introduced the forty shillings jurisdictional limit on writs of trespass. [140] Part of this statute declared that no writ of trespass should be provided to a suitor unless the goods removed were worth more than 40s and thus the case should not be heard in a royal court. However, royal justices in the reign of Edward I were moved, probably by their desire for the profits of justice, to interpret this as indicating that no suits over this amount were to be brought before local courts.

The case of Alice of Stockynge against John of Cornhill, a London surgeon in 1320 illustrates these criteria nicely. [141] The case appears in the Sheriff's Court Rolls under a plea of trespass (not a writ) which suggests that the sheriff was acting as a customary official rather than under the king's writ and common law. However, although Alice is claiming damage to the extent of one hundred marks for the failed cure of her afflicted feet, the goods she claims Cornhill carried away from her house in lieu of payment are worth twenty shillings, well under the forty shillings jurisdictional limit, thus her case is not eligible for a writ, or to be tried in a royal court.

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[140] 'It is likewise provided that sheriffs shall hold pleas of trespass in county courts as they used to and that no one from no shall have a writ of trespass before justices unless he declares on oath that the goods taken away are worth at least forty shillings'; R.C.Palmer, The County Courts of Medieval England 1150-1350 (Princeton, 1982), p.235

[141] Case 9

The writ of trespass however, was demonstrably not the only writ that the litigants in these cases had recourse to. Amongst the other writs used or demanded by litigants in the cases studied are writs of *certioari , venire facias , sub poena, corpus cum causa,* debt and annuity. Of these other writs, the last two, employed in the cases of Eric de Vedica and Alice, wife of William of Stede in c.1485, and Balthazar de Gracyes and Alexander Martin in c.1515, are self explanatory, dealing with the recovery or payment of debts and annuities, however the others perhaps require slightly more explanation. [142] A writ of *certioari* containing the key phrase *certioari volamus* (we wish to be informed) was used either to command the officers of a lower court to supply the officers of a superior court with information concerning a certain case or in a slightly different form to remove the records of a case from a lower court into a higher court e.g. Chancery or the Kings Bench, so the proceedings could continue there. [143] Thus in 1408 a writ of *certioari* is directed to the Mayor of London demanding that the confession of John Luter, leche, concerning the fifteen serpentyns (semi-precious stones) he received from John Clotes in exchange for a cure for leprosy, should be sent to Chancery. [144] Similarly in c.1515 both Balthazar de Graceys and Peter Starky seek a writ of *certioari* in order that their case concerning the disputed cure of Alexander Mertyn should be removed to Chancery. [145] The writ of *venire facias* was used to begin process by summoning either defendants or jurors, and appears in several cases studied. One was issued in 1364 to summon Roger Rushenden to face Mariot and John Broadmeadow in court, two more were deployed in the

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[142] Cases 39 and 45
[143] Baker, English Legal History, pp.626-7
[144] Case 33
[145] Case 45

same manner in the cases of Simon Barber and John Bittern in 1384, and Henry Thorne of South Petherton and John Russell of Shepton in 1386. [146] A similar writ was that of *sub poena* which performed the same function with a forfeit for non-attendance. [147] This writ was demanded in c.1493 by Robert Beauchamp in order to summon John Cokkes and John Barbour to give evidence in Chancery that he did not poison their patient John Walewyn and also in c.1403 by William Parouns to bring William Robynson of London, one of his patients who refused to pay his fee, into the same court. [148] Lastly the writ of *corpus cum causa* was a writ of the Court of Chancery which provided for the review of the causes of imprisonment in lower courts. [149] Both of these last two types of writ are employed in the case of Jasper Raymart, physician, and Thomlynson c. 1504.[150] Raymart first applied to Chancery for a writ of *corpus cum causa* against an action of debt brought by Thomlynson concerning money owed for drugs and later applied for a writ of *sub poena* to ensure the presence of the Mayor and bailiffs of Exeter and the mayor and constables of the Exeter staple in court with him to plead against his imprisonment.

Malpractice: a definition

The term malpractice, when applied to medieval court cases concerned with either the misconduct of practitioners or careless or dangerous treatment by the same, is some what of an anachronism as these cases were

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[146] Baker, English Legal History, pp.630-1; Cases 17, 27 and 28
[147]Baker, English Legal History, pp.624-5
[148] Cases 41 and 42
[149] Baker, English Legal History, p.168
[150] Case 43

more likely to have come under the term 'misfeasance' or 'negligence' rather than malpractice which is the term more commonly used today .

Misfeasance is defined by Baker as " a breach of contract which caused physical damage" when the act was complained of not the failure to fulfil the contract. [151] Negligence literally applied to neglectful conduct i.e. when a usually non harmful action was performed carelessly so that injury, damage or loss resulted. The term was usually applied in fourteenth century trespass cases when the clause of *vis et armis*, trespass committted with force and arms, i.e. an intentionally violent act, could not apply. An action of trepass with force and arms could not be said to reasonably apply to damage resulting from a contracted action such as surgical treatment. According to Baker " in most cases where negligence was made part of the special case in the writ, there was a pre-existing relationship between the parties which precluded an allegation of force against the peace ". [152] The count of such cases usually includes the word *assumpsit* (generally translated as undertaken) to convey the existence of a cosensual contract, i.e. an exchange of promises. This is important because contract law in the middle ages was, if not vestigial, then at least not fully formed, as modern law knows it, and its definitions were a lot narrower. At this point the term covering a legally binding agreement was 'covenant' (*conventio*). However, because of the form of action of covenant in the courts, this term proved too easy to restrict to rigid transactions such as sale or loan which transferred property or resulted in a debt, use of another term might not imply the same responsibility. [153] The use of the term *conventio* would imply that there was

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[151]Baker, Enlish Legal History, p.375

[152] ibid., p.460

[153]However in the suit between Balthazar de Graceys and Alexander Mertyn a covenant is cited but it is made obvious that this is a written document. Case 45 see E.C.P., C1/442/28

at least a verbal contract between the plaintiff and defendant if not a written one. Written contracts would seem to be common in the later period, so much so that Peter Starky, whilst trying to press a suit in Chancery against Balthazar de Graceys over a failed cure in 1515, cites the fact that he does not possess a copy of the contract between Balthazar and his patient as one of his reasons for coming to Chancery and not a common law court. [154] Medical practitioners in some negligence/malpractice cases went to considerable pains to deny that they had entered into such an undertaking (in a case based on the assumption that there was a contract and thus using the negligence clause, the lack of one could cause the case to be thrown out and the plaintiffs to be amerced for bringing a false or faulty case). Matthew Rillesford replied to the case brought against him by the Prior of Guisborough in 1433 in a variety of ways, one of which was to assert that although he did treat Brother Richard he did not undertake to cure him. [155] The use of the term undertaking/undertaken (*assumpsit*) would imply that there was at least a verbal contract between Rillesford and the plaintiffs and that by failing to cure Brother Richard he had broken the contract and was indeed negligent as they asserted. This may seem a small point, but it was important enough for Rillesford, whilst admitting to treating the canon, to deny categorically that he had made any undertaking to cure him. The difference in responsibility conveyed by the two versions would seem to be considerable, whilst the Prior's version indicates a distinct assumption and indeed commitment to a cure, Rillesford's version indicates

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[154] ".....your oratour by cours and rygor of comon lore is lykly to be condempnyd because he hath not the sayd indenture in hys possesyn for to plede and allege it for hys defence in that mater.." Case 45; E.C.P. C1/442\28

[155] Case 35; For a discussion of the practitioner's contractual responsiblities in the case of long term covenants see J.B.Post, "Doctor vs Patient: Two Fourteenth-Century Lawsuits", Medical History 16 (1972) 296-300

treatment but makes no promises of a cure although it is assumed that it is the desired outcome.

Concerning the origins of the term and concept 'malpractice', Chapman cites the first use of the word itself in 1671, at least a century and a half after the cases studied here, and throws welcome light on the subject of how such cases were approached before the formal introduction of this concept into a court of law in 1697. [156] According to Chapman, the case of Stratton vs Swanlond in 1373 is the first incidence of a formal declaration of a surgeon's culpability in the matter of a failed cure. The judge on the case, Chief Justice Cavendish, stated that, as a smith who undertook to cure a horse and failed despite applying all of his skill and care to the treatment, could not be held accountable, so a surgeon who failed to cure despite all his best efforts, could not be found guilty either. [157]

The use of the smith and horse analogy in such a case is not unprecedented. It was used by W. Denom, Justice in Eyre during the 1329 Nottingham Eyre in a misfeasance case brought by an unnamed man against a practitioner who he claimed had put out his eye in the course of treating it with herbs. [158] Chapman also cites this case. He notes that Denom does not expand, as Cavendish does, on the responsibility and liability of both smith and surgeon for negligent treatment but concentrates on motive i.e. whether it is done as part of a contract involving the trade of the defendant or out of deliberate malice. As he later notes the line followed by Denom had the effect of rendering the practitioner practically invulnerable against actions of malpractice unless the patient could prove a

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[156] C.B.Chapman, " Stratton vs Swanlond: The fourteenth century ancestor of malpractice.", Pharos 45(1982), 20-5

[157] ibid. pp.20-2

[158] Kiralfy, Source Book, p.185

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[157] ibid. pp.20-2

[158] Kiralfy, Source Book, p.185

definite aspect of malice in the case. [159] Thus as the earlier case is not concerned with liability as Stratton vs Swanlond is, but with motive, the question of malpractice does not arise. Since the injury was received as an undesired result of a contracted service, the plaintiff is judged not to have a case. There is emphasis laid by Denom on the fact that both the smith and the practitioner he alludes to in a description of a previous case, are men of that occupation (professionals) and from this it might be proposed that an amateur's dabbling in healing might not have the defence provided here. Thus though the two cases use the same analogy they are approached from different directions. [160]

It is interesting to note that the legal responsibility of medical practitioners was firmly enough established by 1435 to be used as an analogy itself. In 1435 in a case of trespass concerning the purchase of some land, the plaintiff's attorney, Ellerker, introduced the analogy of the leech who undertook to cure, gave medicine to this effect and failed to do so as being liable, and in 1443 in another trespass case concerning the purchase and carriage of a quantity of wine, Ayscough, also the plaintiff's attorney , introduced the analogy of a barber who having made a covenant to cure a broken arm by the application of plasters (Ayscough is very specific here) fails to apply the plasters and is then liable for an action of trespass. [161]

Lastly it should also be noted that the case in 1329 was introduced as a misfeasance case, the plaintiff is complaining about an act resulting from

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[159] C.B.Chapman, " Stratton vs Swanlond", p.22 This legal principle might well explain the accusations of malice in several of the cases studied such as that brought by John Broadmeadow and his wife Mariot against Roger Rushenden, against John West by Ralph Fryday and against Simon Lynde by Peter Blank. Cases 17,18 and 40

[160] Given the formulaic nature of medieval law it is very probable that this analogy was one commonly used to illustrate many types of misfeasance cases.

[161] Baker and Milsom, Sources of English Legal History, pp.383-4, 395-6

the covenant between him and the surgeon not the failure of cure and thus breach of contract. The attempts of the defendant's attorney to persuade the justice it was a breach of contract not misfeasance may stem partly from his unfamiliarity with the concept. Baker cites 1348 as the year in which the first successful case of condemnation was made in the superior courts for a contracted job performed badly. More probably it could well be an attempt to get the case thrown out as it had not been brought under the proper plea. [162]

However, despite it's anachronistic nature, the term 'malpractice' will continue to be used throughout this study as it currently most accurately reflects the concept under investigation. In her article, "Medieval Medical Malpractice: the Dicta and the Dockets", Cosman includes a wide panoply of complaints and offences under the umbrella term of 'malpractice' These include failure of a promised cure, excessively high fees, worsening of the condition, incompetence in treatment and care and lastly *iatrogenic sequelae*, when the treatment causes a new condition or injury.[163] If these concepts which are studied here and which currently come under the heading of malpractice are not represented in the legal machinery of the time under such a title, it is more a reflection of the restrictive and ritualised nature of the medieval legal system than evidence that they did not exist or were not objected to and thus it is suggested that the use of the term malpractice is acceptable.

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[162] Baker, English Legal History, p.375

[163] Cosman's article centers mainly around the interaction of the medical profession as a body and the medical guilds with the civic courts in London, although she does draw information from cases from other parts of the country and other courts, the majority of the cases studied here deal with the interaction of medical practitioners as individuals with other individuals, patients or their representatives in both civil and criminal legal proceedings. There are cases which this study and Cosman's share in common but a large proportion of those chosen to illustrate this study are concerned with areas other than guild/civic court relations and from regions other than London. Cosman, "Medieval Medical Malpractice", p.24

Settlement outside the courts; private arbitration.

Despite the heavy emphasis laid on the courts and court process in this study it is as well to consider the fact that there was another option available to those wishing to settle a dispute, namely private arbitration. (John Isyng's somewhat unorthodox methods in 1473 may be considered a third option. When criticised by Gilbert Humfreyson, an unsatisfied patient, Isyng, a Newbury surgeon, accused the former of horsetheft.)[164] There are three cases of private arbitration in those studied, that between Robert Loke and the Abbot of Bourne in 1381, Nicholas Bradmore and Richard Asser in 1405, and Matthew Rillesford of York and the Prior of Guisborough and Brother Richard, one of his canons and Rillesford's patient in 1433. [165] The practice of private arbitration was widespread in medieval England, avoiding as it did the cost and lengthy duration of many court cases. As it does not concern the courts or their officers, except in cases where judges act as arbiters or arbitrators and here their involvement is separate from their formal judicial capacity, there is little written concerning it in the legal texts of the time and thus it may well have been underexposed and undervalued. However, the work of some historians including Linda Fowler, Joel Rosenthal, Michael Clanchy and especially Edward Powell provides sufficient clarification for this study. [166]

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[164] Case 38

[165] Cases 25, 32 and 35

[166] L.Fowler, "Forms of Arbitration", Proceedings of the Fourth International of Medieval Canon Law, (1976), 133-47; J.T.Rosenthal, "Feuds And Private Peace-Making: A Fifteenth-Century Example", Nottingham Medieval Studies, 12, (1969), 84-90; M.Clanchy, "Law and Love in the Middle Ages"in Disputes and Settlements, ed. J.Bossy, pp.47-69; E.Powell, "Arbitration and the Law in England in the Late Middle Ages", Transactions of the Royal Historical Society, Series 5, 33 (1983), 49-67

The courts themselves recognised the advantages of private arbitration compared to that of the crown in certain circumstances. In a society consisting of tight-knit and often fairly isolated communities it is also a far more obvious and immediate option than submitting the matter to either the far-off courts at Westminster or the intermittent peripatetic courts, both of which were already very busy.

One of the obvious drawbacks to private arbitration from the historian's point of view is that it is just that, private, and thus records of such transactions are scarcer than those of the royal courts. Those incidences cited above come to our attention because either the terms of the arbitration have not been fulfilled or one party is denying that it occurred. The former is the case in the action between Robert Loke and the Abbot of Bourne and the latter circumstance occurs in the cases between Nicholas Bradmore and Richard Asser and Matthew Rillesford and the Prior of Guisborough. [167] In both the latter cases the practitioners, Bradmor and Rillesford, have dissatisfied patients who despite the private arbitration claimed to have taken place by the former, have taken their cases to the royal courts, the King's Bench and the Court of Common Pleas respectively. However the judgement of an elected arbitrator or the compromise achieved with the aid of mutually agreed upon arbitrators was held to be valid in most if not all cases. In addition both parties generally agreed that there should be no further legal action following the settlement [168] and as Powell states " the common law provided unequivocal support by accepting the plea of arbitration as a bar to further legal action." [169] Therefore it was imperative

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[167] Cases 25, 32 and 3

[168] Powell, "Arbitration and the Law", p.56

[169] Fowler discusses both the nature of the various types of arbitration and its validity in her article. Fowler,"Forms of Arbitration"

for both Asser and the Prior to successfully establish that the arbitration did not occur so that their cases could be heard by the court. In the case between Asser and Bradmore, Bradmore's assertion that they had both voluntarily submitted to arbitration and that he had, in accordance with the ruling, given Asser the kiss of peace and a gallon of wine which they had then drunk together, was disregarded by the court, and jurors declared that arbitration had not taken place and ruled for Asser.

The records from which the case between Rillesford and the Prior of Guisborough is gleaned do not supply a conclusion, the entry ends with the statement that the case is to be considered by a jury, but they do provide some very interesting facts. [170] Foremost in relevance here is the surprising information that the arbitrator chosen by Rillesford and the Prior is an apothecary, one Robert Belton. [171] Given the rivalry between members of the medical profession and apothecaries and the, at times, strenuous efforts made by the former to exclude the latter from the outright practice of medicine, it is surprising to find not only that Rillesford accepts Belton as an arbitrator but submits, according to him, to the latter's supervision of his treatment. However, Rillesford is cited as 'leche' rather than physician, surgeon or master, thus presumably not a university or guild-trained professional but a practitioner with a rather less formal status, so there is less difference in status between him and an apothecary than the former and this may explain his willingness to submit to his judgement. [172]

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[170] Case 35

[171] Other aspects of this case are discussed elsewhere in this study.

[172] Apothecaries were not generally included in the membership of the medical guilds however in many towns the Barber-Surgeon's Guild oversaw the affairs of all medical practitioners even professional surgeons and physicians as the members of the other medical and surgical factions were negligible in comparision to their numbers. The Barber-Surgeons Guild in York was powerful and well established guild dating back to c.1299. The ordinances of the Guild appear in the York Memorandum Book and the civic ordinances of

According to Rillesford, Belton decreed that he was to continue his treatment of the canon under his supervision for eight days and the Prior and Brother Richard would discontinue any actions against him. The Prior and Brother Richard appear to have been dissatisfied with this ruling and took the matter to the courts and therefore it is necessary, given the common law's support for the results of arbitration, to deny that it occurred.

There is another explanation which may be considered, that there was in fact no arbitration and that Rillesford claimed there had been to prevent the case going to court. There may have been collusion between Rillesford and Belton. Many medieval sources make accusations of partnership and even conspiracy between medical practitioners and apothecaries and therefore, though essentially it must remain supposition, it is still an option worth considering . [173]

These cases show an alternative process to that of the courts, one with equal, if not greater, chances of producing a settlement that would be considered equitable and agreeable by both parties. Therefore although this study concentrates on the coincidence of the medical profession and the medieval courts and legal system, it is as well to bear in mind that as well as all the cases concerning practitioners and their patients that appear in the courts and are thus recorded and available to the historian, there may

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the city for 1301 contain regulations for physicians, surgeons and practitioners. Should it have incorporated apothecaries within its baliwick it is unlikely that they would be allowed to rise to the role of supervising practitioners, this being reserved to licenced surgeons in the main. Also in the York civic ordinances for 1301 there is a distinct definition made between physicians and doctors and apothecaries they are dealt with in two separate categories.Auden, "The Guild of Barber Surgeons of the City of York", pp.70-6
York Memorandum Book (1376-1419), pp75-6, 207-11
"York Civic Ordinances, 1301", ed. M.Prestwich, Borthwick Papers, 49, pp.17-8

[173] "Ful redy had he his appothecaries to send hym drogges and his lectuaries, for ech of hym made oother for to wynne - hir frendship nas nat newe to bigynne." Chaucer, Works, p.21

be as many again which were subject to private arbitration and reached a peaceable conclusion without recourse to the courts. There is the suggestion that in many cases litigation was a tool used in combination with on-going arbitration to pressure one or other of the participants into a compromise or to speed up the process. [174] It is possible to suppose that some of the cases studied here are part of some such procedure and that they were in fact settled out of court and more amicably than might be suggested by the record. A case where this aspect of the interaction of arbitration and the legal system could apply is the case between Bradmore and Asser. [175] Whilst the arbitration and the subsequent legal action seem to be concerned with the botched cure of an injured thumb, it appears that this is merely part of an ongoing conflict between the two men. Bradmore claims that the aforementioned arbitration took place on 18 April 1405, the jury of the King's Bench gave judgement on 30 October 1405 and Bradmore appeared before the court to pay Asser's damages on 11 November 1405. However the Close Rolls show that there was another case running concurrently between Asser and Bradmore for there is a record of a writ of *supersedeas* (an injunction causing a stay in the proceedings) protecting Asser from a suit from Bradmore concerning a service contract between them. [176] It seems that Asser was employed by Bradmore, presumably as an inferior in the same craft to perform those surgical tasks such as bleeding that surgeons felt were beneath them, and had left before his term of service was up. The writ was issued on 27 October 1405, 3 days before the court finds for Asser in the other case! Thus it seems there are two cases proceeding between the

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[174] Powell, "Arbitration and the Law", pp.49-67
[175] Case 32
[176] C.C.R. 1402-1405, 2, p70

two men at the same time, and each is playing the role of defendant and plaintiff . To further complicate matters, on 4 February 1406 a writ of *supersedeas omnino* (also an injunction but causing a complete and utter halt to the proceedings) was issued concerning an action of Asser against not only Nicholas Bradmore but the more famous John Bradmore, physician to Edward III and possibly Nicholas's brother. [177] It would appear that this is a cycle of suit and countersuit, unfortunately there is very little information concerning the second case which could determine which came first. However, a possible order of events is that Asser sued first and in order to put pressure on him during arbitration, should it have taken place, Bradmore initiated the second suit which was halted during the process of the first and then Asser in answer to Bradmore's suit brought yet another one against both the Bradmores which was halted completely by the second writ. [178] This of course is highly speculative and leaves many questions hanging including the question of Asser's relationship to Nicholas Bradmore, patient, employee or both? Perhaps the wound to his thumb was received during his service to Bradmore or his service was the price of cure, again highly speculative but worthy of consideration.

The cases above illustrate the various processes and forums that were used by medieval litigants to settle their disputes. Often several different tpyes of settlement would be used, whether due to the failure of the initial process or to the running of a suit in several forums respectively in order to gain a result in at least one of them. They also illustrate that, as the fields

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[177] ibid p81; Talbot and Hammond, p124-5

[178] Bradmore seems to have been a distinctly litiginous type, involving himself with legal processes in many ways, as mainpernor for other practitioners, quarreling with innkeepers and bringing several suits himself; C.C.R,1399-1402, pp.190, 419; ibid. 1402-5, p.182; ibid. 1409-13, p.99; ibid. 1392-6, pp.208-9; C.P.R. 1401-5, p.244; ibid. 1408-13, p.12

of law and medicine both advanced and grew, so too did the demands of the patient or litigant who in these cases were often one and the same, and were determined to get their money's worth.

CHAPTER FOUR

THE LEGAL CASES: AN ANALYSIS

There are several types of cases within the corpus of those studied. Although they are leavened with cases concerned with debt, manslaughter and those which involve medical practitioners in an advisory capacity, the most prolific cases are those concerned with medical malpractice and/or breach of contract. Cases of malpractice which define contracts between patients and practitioners are the richest source for matters such as fees, illnesses suffered and the nature of treatment.

Contracts.

The cases examined here are those in the database which may be considered the most informative in the area of contractual and financial arrangements between practitioners and their patients. They are drawn from a variety sources from the period from 1276 to 1518. In general it would appear that the later the date of the case the more informative it is, which is certainly a reflection on the development of the English legal system and its system of records but also perhaps a reflection of increasing complexity in the relationship between medical practitioners and their patients. Certainly where the details of contracts are specified later on in records such as the Chancery Rolls there is a high degree of formalisation regarding details such as the payment of fees, what constitutes a cure and even when it is expected to be effected by. This does not seem to be reflected in the cases from the beginning of the period. However, as stated the most informative of the later cases come from the Chancery Rolls and the Court of Chancery was not as formalised as its counterparts. This may well be

partly a result of the formal rote nature of common law pleading in this period.

From a number of the cases studied it is possible to deduce information about practitioners, the contractual relationships they entered into with their patients and how they perceived and fulfilled their contractual obligations. There are two types of contract or covenants illustrated: long term contracts between a practitioner and a person, usually wealthy or of some position, or an institution either lay or ecclesiastical which retains the physician, either by a simple agreement or by an annuity paid in either money, goods or even shelter; and short-term contracts between a practitioner and a patient who was already ill and in search of a cure.

a) Long term contracts.

Long term contracts appear to be common. The noble and wealthy had their retained physicians constantly in attendance, their solicitude secured by annual retaining fees, gifts of food and clothing and grants of ecclesiatical livings, secular property and other privileges. These retained physicians and their relationships with their patrons, both fiscal and social, are impressively dealt with in some detail in the work of Rawcliffe and Hammmond.[179] However, there is another source of medical patronage that appears to have been somewhat neglected by comparison, that of the Church. That the great princes of the Church, archbishops, bishops and the upper echelons of the ecclesiastical hierarchy had retained physicians is certain, but what is initially more surprising is that abbeys and monasteries frequently retained local physicians, surgeons, and leeches to tend to the members of its community. Barbara Harvey has made this area the subject

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[179] Rawcliffe, Medicine and Society, pp. 109-12, 114-8, 138-40; ibid., "The Profits of Practice", 61-78; Hammond, "Incomes of Medieval Doctors", 154-69

of her work on the Westminster Abbey Muniment rolls which have revealed the abbey's relationships with local medical practitioners. [180] However, it cannot be expected that every monastic community was fortunate enough to have a skilled healer amongst its ranks and it would be preferable, considering the Church's ordinances concerning the practise of surgery by the religious community, to have recourse to a surgeon for those cases which required it. [181] Among those religious establishments which retained practitioners in one form or another are Bath, Durham, Ely, Norwich, Peterborough, Tewkesbury, Westminster, St Swithins, Winchester, and Worcester. [182]

Among the cartularies, muniment rolls and infirmarers' rolls of these communities, evidence can be found of contracts with medical practitioners. The terms and rewards vary. The Westminster Abbey Infirmarers' Rolls between 1320 and 1420 list many and varied practitioners, who, in addition to their fees, were paid yearly stipends of amounts ranging from 13s 4d to £4, the most common amount being 53s 4d. [183] Sometimes several practitioners were retained, for a modest amount, such as at Durham, where in c.1321 Nicholas Bishopton, a physician, is listed as one of three practitioners serving the monastery at Durham concurrently. [184] Sometimes there is only one practitioner bound by very generous terms to make the care of the abbey or monastery his priority as at Ely and Worcester. Two

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[180] B.Harvey, Living and Dying in England, 1100-1540: the Monastic Experience, (Oxford, 1993)
[181] Talbot and Hammond, p.8
[182] Talbot and Hammond, p.121 for Bath ; ibid., pp. 215, 218, 294 for Durham; ibid., pp. 8, 193-4 for Ely; ibid., p32, for Norwich; ibid., p219, for Peterborough; ibid. p105 for Tewkesbury; ibid., pp. 16, 51, 142, 157, 193, 207, 211, 254, 258, 299 , for Westminster; ibid.. p355, for Winchester; ibid., p.123, for Worcester.
[183] Talbot and Hammond, pp. 16, 51, 142, 157, 193, 207, 211, 254, 258, 299
[184] ibid., p.218

such examples exist for Ely. In c.1272, Adam of St Albans undertook to do "all that pertains to the art of surgery" at the Priory of Ely in return for a very generous grant from the Prior of accommodation and support including food from the Prior's own larder. John Walford, physician, also had a contract with the Priory of Ely. On the 14 Sept 1278 he agreed to treat the Prior and Chapter of Ely in return for board, potage for one palfrey, a manse within the court, on the proviso it was enlarged for him, and special food, drink and candles for his two boy assistants.[185] The contract between John Bosco, physician and minor cleric, and the convent of Worcester was similarly lucrative, providing him with best-quality beer, food, provision for his horse and groom and an annual stipend of 40s in return for "faithful attendance in the art and office of medicine", making the demands of the convent his priority and maintaining the confidentiality of the convent and its members. [186]

Two such contracts are spotlighted by legal action taken by the practitioners involved, those of Master Geoffrey Dauratus and the Abbot of Gloucester, and Master Simon Bredon and the Priory of St Pancras at Lewes. [187] As the Abbot of Gloucester's medical advisor, Master Geoffrey was to receive an annuity of 8 marks, while Master Simon was to receive an annuity of £20 and accomodation, should he desire it, in return for serving as medical advisor to the Priory of St Pancras as a whole. Both practitioners brought writs of annuity against their patrons claiming arrears of 20 marks

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[185] ibid.. pp. 8, 193-4

[186] Ibid., p.123

[187] Year Book Edward II, pp.80-4 This case appears as two separate entries in the Year Book, one under the additional name of Harry Daman. However, Post's research (see below) has found that, as suspected by Bolland, the case is actually brought by one physician and appears in the Common Plea Roll for 1303.
J.B,Post"Doctor vs Patient: Two Fourteenth-Century Lawsuits", Medical History 16 (1972) 296-300

and £30 and damages of 10 marks and £100 respectively. As can be noted, there is a significant difference in the amounts granted. Both practitioners are physicians, the Common Plea Roll refers to Geoffrey as *physicus* and the Year Book gives both him and his alter ego the honorific of master, so there is no disparity in status between him and Master Simon yet there is a considerable one in the amounts of their annuities. In the absence of any contemporary scale of pay, and acknowledging that the other examples cited above show considerable variation, it is suggested that the financial differences between the two cases could be attributed to the fact that Master Simon is responsible for the health of an entire community whereas Master Geoffrey treated the Abbot only. Another factor could be that Master Simon was a physician and ecclesiastic of some note during his lifetime, whereas Master Geoffrey does not appear to have been so prominent in his. [188]

Both practitioners had their annuities discontinued because it is claimed that when they were sent for by the establishments in question they refused to go. Neither deny that when they were sent for they did not attend, but both seek to justify their nonattendance in different ways. Master Geoffrey cited the specific nature of his contract as his excuse, stating that he was to be paid expenses for his attendance and none were sent thus he was not sent for according to its terms, and although the Chief Justice on the case remarked that the distance involved, 8 leagues (approximately 12 miles), was small enough to cast doubt on the need for expenses, the suggestion is that judgement favored the plaintiff. Master Simon and his attorneys took a different tack claiming the nonspecific nature of the contract as defence, the deed of appointment states that the annuity was granted "*pro bono et*

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[188] Post,"Doctor vs Patient", p.298

laudibili auxilio et suo nobis et Monasterio nostro impenso et imposterum impendendo". Master Simon's counsel claimed that far from being by way of a contract to ensure the practitioner's medical advice, the annuity was freely given in return for his relinquishing the living of East Grinstead which belonged to the Priory, this is the 'aid' (*auxilio*) in the grant. [189] The nature of the advice cited in the grant is not made specific and the plaintiff's counsel claimed firstly that it did not specify that the advice should be medical and might, in fact, pertain to the living, and secondly he questioned the obligations and responsiblities of an 'advisor' as to whether they were obliged to travel when it was not specified in the agreement, using the example of similar contracts involving lawyers.[190]

It is at this point in the dialogue between the opposing counsels that the value of this case to the present study can be appreciated. The responsibility of physicians in such situations is compared by both Belknap and Cavendish (Bredon and the Prior's attorneys) to that of lawyers and in the process a picture is drawn of a possible view of the relationship between the retained practitioner and his patron. Cavendish's view is that in a similar situation a grant to a lawyer would be assumed to be for legal services, unless any other type was directly specified, and he challenged Belknap's proposition that lawyers were not expected to travel nor to give advice when they were not sent details of the case. Thus, according to Belknap, Bredon was neither obliged to travel nor give advice as the Prior had sent no details of his illness. According to Cavendish, "illness is so privy that only a physician can diagnose; the physcian is bound to counsel and aid his patient since the

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[189] ibid., p.298

[190] Master Simon's assertion that he was ill with the gout and unable to travel to treat the Prior is seemingly not regarded by both counsels as central to the issue.

patient himself cannot diagnose in order to notify the physician, nor, because of the illness, travel to him, the physician has to travel to the patient". [191] Thus at least one legal view of a contracted physician's responsibilities is laid out here. It excludes the possibility of self diagnosis which the increasing array of vernacular texts and recourse to appothecaries would suggest but must be taken in context, Cavendish was trying to establish what his client was owed by his physician and that he had not fufilled those expectations, and accords to the physician both specialised expertise and responsibilities. However what is also shown by both these cases is that it seems neither unusual nor unreasonable for a practitioner to decline to visit their patient. Other cases show practitioners to have had very few scruples about departing in the middle of treatment. In 1288, Roger Barber left his patient, John, son of John of Eltisley, three days into a course of plasters prescribed for his bald head and in 1330, Thomas the Leech, having agreed to treat John Warner's arrow wound for a period five weeks, left him two days afterwards thus necessitating that another practitioner, Master Adam of Suthwyk be brought in at a much higher cost. [192]

b) Short term contracts.

Short term relationships between practitioners and patients would appear to have been conducted on a contractual or semi-contractual basis. In almost half of the forty-five cases in the database there is evidence of, if not an actual covenant or contract, then a pre-existing agreement concluded before treatment commenced. In many of these cases the use of the word 'undertaken' or (*assumpssiset*) is taken to mean that there was such a

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[191] Post, "Doctor vs Patient", p.300

[192] Cases 4 and 12

contract between the patient and practitioner concerned.[193] In others the count actually includes an accusation of breach of covenant or mention of the same sometimes in great detail. [194] There is even a pre-treatment agreement that could be described as malpractice insurance in 1394, where the practitioner, a surgeon by name of John Catlew, before embarking on an operation for stone, obtains an oath sworn by the patient's wife that whatever the outcome she will not sue him, a wise move given the perilous nature of this undertaking. [195] At the other end of the cautionary scale Agnes, wife of John of Stratton, claimed that John Swanlond apparently guaranteed "well and competently to cure a certain wound in her hand" although he subsequently denied this. [196]

The nature of these contracts varies greatly. Some were written, others oral agreements, some concluded in front of witnesses such as local court officals or dignitaries, others formally set out in written documents. Both Balthazar de Graceys and John Brown, in 1515, had written contracts with their patients as, less expectedly, did the anonymous patient in 1312 whose case for breach of contract appeared before the London Eyre for that year.[197] Alice, wife of John of Cartmell swore her oath before the Mayor of York and his aldermen in 1394 and William Parouns's patient, William Robynson, is recorded as having "feithfully promysed afore sufficient record that yf your supplicaunt did the best of his connyng unto the said William and yf he retorned to lyfe that then he shold reward your said supplicaunt as well as

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[193] See above. The phrase *quod manucaptio* is also used to imply such a contractual relationship in the case between Robert Loke and the Abbot of Bourne; Case 25

[194] Cases 4, 11, 42, 44, 45, and 46

[195] Case 31

For more information on insurance for practitioners as organized by the guild see Cosman, "Medieval Medical Malpractice", 22; ibid., "The Medical Medieval Third Party", 152-62

[196] Kiralfy, Source Book, pp.185-6

[197] Cases 45, 44 and 7

ever he was rewarded". [198] Thus contracts existed in many forms between patients, and though we can deduce most of them merely by reference to them in the count of the suit, there are several cases in the database that not only provide us with knowledge of their existence but also invaluable details of the contracts themselves.

The case concerning Balthazar de Graceys and his failure to cure Alexander Mertyn c.1518 is a particularly fine example consisting of two manuscripts from the Early Chancery Proceedings detailing the issue from the viewpoint of Balthazar and of the plaintiff, one Peter Starky whom, it appears, was acting on behalf of the Bishop of Ely, Alexander's employer, who had passed away during the course of the dispute. It illustrates the consequences of nonfulfillment of contract very well. [199] Balthazar de Graceys, a surgeon, undertook to cure Alexander, servant of the Bishop of Ely, of the great pox. He was given the first instalment of the fee in advance but was not considered to have effected a cure although he claimed to have done so. Alexander therefore tried to recover this first installment by means of an action of debt and Balthazar took the case to Chancery to get a writ of *certiorari* to remove the case to a higher court. The first appeal to Chancery was from Balthazar for a writ, the second much fuller appeal was from a man named Peter Starky who appears to have been connected to the Bishop of Ely and was appealing either in reaction to Balthazar's appeal or to another action (the manuscript of which is damaged). It is possible Balthazar was taking advantage of the death of the bishop to get the remainder of his promised fee as alleged, but it is also possible that the patient and his party were seeking to evade paying what was honestly due

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[198] Cases 31, and 42
[199] Case 45

to Balthazar. Unfortunately, as is typical in these cases, only biased accounts exist rather than solid facts.

This case affords rich details about the patient, his illness (he is described as having the great pox), his occupation which appears to have been that of servant to the Bishop of Ely, and his treatment. In addition to his fee Balthazar was to be paid 3s 3d per week by Alexander for bed and board indicating that the patient was to stay at Balthazar's house during the treatment. However, the most valuable pieces of information given by these documents are the details of a contract between the surgeon and the Bishop of Ely and his servant. In this contract not only are the fees specified but also expectations of cure and treatment are defined and the opinions of both parties concerning the fulfilment, or not, are presented. The contract itself is a written one and the possession of the physical document appears to be vital to prove the case as the concern of Peter Starky concerning its whereabouts illustrates. It should have been in the possession of the bishop but he had died and Peter did not have it. This was his reason for demanding that the case go before Chancery.

The terms of the contract as presented by the second document relating to Peter Starky's appeal, appear rigorous to say the least. [200] For a fee of £10, paid in three instalments of five marks each, Balthazar was expected to effect a cure in several well defined stages. After receiving the first installment he had eight weeks to cure Alexander so that "it shuld bee knowen or percevyd by man's reason that the said Alexander should be perfectly cured thereof". This accomplished he would receive the second installment of his fee. The third and final installment would come after a

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[200] Case 45; E.C.P., C1/442/28

year during which "it shuld be percevyd and knowen by reason and in syght of man that the sayd Alexander shuld be surely helyd of the sayd infyrmyte and in the meane season that he be not vexed again with sayd infymyte". In other words he should not only be healed but look healed and should show no signs of a relapse. If any of these conditions was not fulfilled then Balthazar was to refund any money he had already received. Balthazar's performance of the terms of the contract was guaranteed by one Richard Clifford, a London mercer. These are demanding conditions which demonstrate very clearly the expectations of the Bishop and his servant concerning the cure and what they expected to get for their money. In fact these rigorous terms prompt the question of whether it was actually possible for Balthazar to satisfy the bishop and Alexander's expectations. The criteria for the cure was subjective, to say the least, and the possibility of Alexander being completely healthy for an entire year without catching even some minor ailment that might be seen as a resurgence of the disease seems unlikely. However, Balthazar must have been reasonably confident that he could satisfy at least some of these terms for he agreed to the contract. As to the actual fulfillment of the contract, which is the point in dispute, this demonstrates the differing criteria of the surgeon and his patient. Balthazar obviously felt that he had effected a cure, excepting a condition which he saw as, if not beneficial to the patient, dangerous to try and remedy at that point, namely, the 'littel issue' left running in one of Alexander's legs, possibly a running sore. The bishop and his servant however, did not regard the cure to have been effected as there was still visible evidence of illness and cited the necessity of employing another servant to take Alexander's place. Therefore they wished to recover their money.

This example demonstrates most aspects of patient-practitioner contracts. It specifies the undertaking to cure a certain disease or wound, the fee and how it is to be paid, sureties in case of failure of the cure and a definition of what the cure should consist of. Also rich in information are the cases of William Parouns and William Robinson c.1493 concerning an unpaid fee for a pestilence cure, John Dobson and John Brown c.1518 concerning the latter's failure to cure the former's palsy and the case between John Conyers and Giles Polliver c.1518 concerning the latter's reluctance to pay for Conyer's medicines and labour during the cure of his child's diseases. [201] Other cases are not so expansive but provide some of the same details depending on the date and records from which they are drawn. In at least twenty of the major cases studied here there is reference to some form of contact or formal undertaking between the two parties. The contract or covenant may be directly referred to as in the cases of the anonymous surgeon who botched the cure of a wounded hand in 1312, that of Thomas the Leche and Thomas of Southwyk in 1330, Thomas Butolf and Robert Skyrne in 1388, William Parouns and William Robinson in c.1493, Balthazar de Graceys and Alexander Martin in c.1515, and John Brown and John Dobson in c.1515 where the practitioner may be described as having undertaken, faithfully promised or even guaranteed to 'well and competently' cure their patients' various ills. [202] In the case of Mariot, wife of John Broadmeadow's wounded arm in 1364, Roger Rushenden apparently "faithfully promised.....to restore the aforesaid arm and hand to health as wel and safely as any surgeon in London", while in 1388, Thomas Butolf during his litigation with Robert de Skyrne "in return for a

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[201] Cases 42, 44, 46
[202] Cases 7, 12, 29, 42, 45, and 44

certain sum of money paid to him beforehand in London in the parish of St Magnus in Bridge Ward had undertaken competently to cure the aforesaid Robert of a certain infirmity of which he suffered. [203] Not every physician however, was willing to acede to this description, Matthew Rillesford for one, as discussed above, was adamant that he did not enter into such an undertaking as was John of Cornhill in the case brought against him by Alice of Stockynge. [204] John Luter admitted the undertaking to cure but disagreed as to the disease they had undertaken to cure. Luter maintained that he had not fraudulently undertaken to cure John Clotes of leprosy as he claimed, but of *salsefleume*, a skin disease attributed to salt humour. [205] Similarly Lewis Lombard also differed with his patient's description of the condition he had agreed to cure claiming that he had not agreed to cure a injury under the skin near Thomas Birchester's groin (presumably a surgical complaint and thus a more perilous undertaking), but an illness in his stomach. [206]

In several of the contracts there are guarantees other than those established by John Catlew. In the cases concerning Peter Blank, Balthazar de Graceys and John Brown there are men who have agreed to stand surety for either patient or practitioner and their sucess in curing. [207] In 1466 William Myll, a barber stands surety with another man (there seem usually to be at least two) for the sum of 5s against the failure of Thomas, an Oxford

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[203] Cases 17 and 29

[204] Cases 35 and 9

[205] Case 33. The general view of leprosy in the Middle Ages was that it was incurable, Guy de Chauliac states this directly, and therefore to contract to cure it was fraudulent thus Luter would no doubt be keen to refute this charge. Chauliac, Cyrurgie, p.3

[206] Case 30

[207] Cases 40, 45 and 44

physician, to cure Roger of Elmbrigge's head of a wound or pain. [208] In 1395 a Newark leech was condemned by justices of the peace for demanding the 'extortionate' sum of £40 in securities before treatment and in the case of John Brown, John Dobson is bound to Nicholas Lathet and Thomas Lathampton, gentlemen, by pledges of £20, twice the amount of Brown's fee, for a palsy cure and when Dobson refuses to pay, as the cure fails to reach his expectations, Brown sues for these pledges in the name of all three. [209] However, in the case of Peter Blank and Simon Lynde in 1492 the shoe is on the other foot. Having failed in a previous attempt to bring an action of trespass against Blank, the patient's father, Lynde sued one of Blank's sureties, a merchant named Aldebrandyn of Ieane, whilst the surgeon himself was away. The amount of either fee or surety is not mentioned in the account. [210] These cases involving pledges and sureties are all of a later date, from 1466 to 1515 and those standing as surety are generally reputable, either other medical practitioners, merchants or gentlemen, Lathet for example is one of the King's barons. These sureties are pledges made to or by third parties to guarantee by means of a promise of money that the practitioner will perform his cure or that the patient will pay the fee. Their use in contracts between practitioners and patients demonstrates the increasing complexity of such contracts, and forethought and determination on the part of either side to get what is due them; they provided both motivation and a deterrent.

Another type of contract entered into by practitioners that is revealed by litigation are those between practitioners and lesser practitioners. Records

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[208] H.E.Salter, Registrum Chancellarii Oxoniensis 1434-69, (Oxford Historical Society, 1932), 94, p.202

[209] Proceedings before the Justices, p.130; Case 44

[210] Case 40

of a writ to halt litigation concerning it, provide evidence of a contract between professionals, Nicholas Bradmore, a London surgeon, and Richard Asser, a Southwark barber. According to the record Bradmore was suing Asser for leaving his service before the time stipulated by their contract. This would suggest that Asser, a barber, was employed by Bradmore to perform tasks of a surgical nature such as bleeding and cautery that were unsuited to the more esteemed surgeon. [211]

The profits of practice: financial arrangements between practitioners and their patients.

Medical litigation can prove rewarding in providing practical figures and insight into financial arrangements made between patients and practitioners in England. Information on medieval medical fees can be found in many sources, particularly the fees of practitioners treating members of the upper echelons of society, both lay and religious. Records of their payment appear in surviving household accounts, grants and wills. The Patent Rolls provide information on the remuneration of royal physicians. The recorded affairs and wills of the more sucessful and famous practitioners provide such information also, if only by indicating how prosperous practitioners could become. These records show that physicians were paid not only in cash but in clothing, luxuries and, most lucrative of all, grants of land, rents and privileges. It is worth remembering that most

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[211]See ch.3 for the discussion of arbitration and for a deeper analysis of this case; C.C.R, Henry IV 1405-9, p.70. In her translation of John of Gaddesden's Rosa Anglica, Wulff cites a passage written in reaction to this dismissive attitude. "And although we leave these things (bloodletting, scarification cautery, sanguisugs) to barbers and women in (our) pride and unworthiness, (yet) they are the work of the chirugeon because Galen and Rhazes performed these operations with their own hands, as in clear in their books; and I myself am a professional bloodletter, for I let veins that the most eminent barbers cannot let.", Gaddesden, Rosa Anglica p.xviii

practitioners were not sustained merely by their fees but had other means of income also. University-trained physicians were likely at least to be in minor orders and thus in receipt of a living which would sustain them. Henry Thorne of South Petherton who treated John Russell of Shepton's injured leg in 1386 for example, was a chaplain and Eric de Verdica who treated Alice, wife of William Stede of London in 1485, was a Grey Friar. [212]

Another source of information on fees are contemporary medical and surgical texts. Their authors are often quite explicit on the subject of fees and payment. John Arderne, author of the Treatise on Fistula in Ano, 1376, specifically cites fees in his work. Arderne cites his fee for a fistula cure, claiming that he had never taken less than £5 and advising that £40 with a 100s annuity and robes was not too much to ask from the most wealthy and noble patients. [213] This is considerably more than the fee of 32s 8d charged by Nicholas Sax to perform this cure (and botch it) on a Southampton man in the mid-fifteenth century. [214] Arderne also cites a fee of 20s for a single application of mercury as a scabies cure. [215] John of Gaddesden, author of the Rosa Anglica, c. 1314, and Henri de Mondeville, author of the Chirurgie, c.1306-12, speak generally of payment, advocating sliding scales of payment, determining what to ask for and describing the patient's attitude to payment. Mondeville even describes various types of patient, classifying them according to their ability to pay.[216]

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[212] Cases 28 and 39

[213] Arderne, Fistula in Ano, p.6

[214] Rawcliffe, "The Profits of Practice",pp.65-6

[215] Arderne, Fistula in Ano, p.111

[216] Gaddesden, Rosa Anglica, p291;Mondeville, Chirurgie, pp.110-13

The question of payment by wealthier and noble patients is more than adequately discussed by Rawcliffe and Hammond in their work. [217] However, the treatment of the middle and lower classes is a much less well documented area. They could not afford to retain their own physician with annual grants of money and privileges and neither could they usually afford the eminent physicians and surgeons of the day, the details of whose lives might survive the passage of time. Thus litigation between practitioners and patients provides information concerning the treatment of these sections of the population, those able to afford medical treatment but not of the highest order, and those able to afford some legal recourse in the case of lack of cure. This is not to say that the all participants of the cases studied fall into this bracket but they do include a substantial proportion of members of the middle and lower classes, some of whom seek redress for amounts as low as a few shillings. [218]

Fifteen of the cases in the database contain information concerning fees, the amounts paid and how they were paid, while another cites an annuity paid to a practitioner by the Abbot of Gloucester.[219] These cases range in date from 1288 to 1515, with the main body taking place during the 1400's and the amounts referred to range from 9d to £10. Other cases do not cite amounts but refer to a "suitable fee" and even to rewarding the practitioner "as well as ever he was rewarded".[220] The fees cited here are to be paid or are paid in cash except for the fee given to John Luter by John Clotes which includes a miscellany of valuable objects including fifteen

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[217] Rawcliffe, "The Profits of Practice", 61-78; Hammond, "Incomes of Medieval Doctors", 154-69

[218] Cases 4 and 26

[219] Case 8

[220] See cases 32 and 42

semiprecious stones known as serpentyns worth 9 marks, gold to the value of 60s and a sword worth 6s8d, worth in total £9 6s 8d.[221] Also John of Cornhill, although not technically 'paid', took his fee in kind, allegedly relieving Alice of Stokynge of a blanket, two sheets and a surcoat worth 20s.[222]

Some cases relate specific fees to specific items. For example, several cases refer to separate fees for medicines and labour. The fee required of William Robyson by William Parouns is separated into two amounts, 20s for medicine that he administered to him and that he had paid for himself, (presumably made up by an apothecary), and "a competent reward for his labour and attendaunce uppon the said William".[223] Also Balthazar de Gracey, in addition to his £10 fee, received 3s 4d weekly for board whilst treating his patient in his (Balthazar's) house.[224]

Demands for fees paid partially or fully in advance echo the exhortions of Henri de Mondeville who maintained that "the chief object of the patient, and the one idea which dominates all his actions, is to get cured, and once he is cured he forgets his own obligations and omits to pay ; the object of the surgeon one the other hand is to obtain his money and he should never be satisfied with a promise or a pledge, but he should either have the money in advance or take a bond for it".[225] He advises that "the surgeon who wants to treat his patients properly must settle the fee first of all, if he is not

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[221] Case 33. Interestingly, the serpentyn was reputed to have medicinal properties. It was cold in nature and when placed on the back of the neck alleviated headaches and nosebleeds. Spufford cites the mark as being worth 13s 4d; P. Spufford, "Handbook of Medieval Exchange", Royal Historical Society Guides and Handbooks, 13 (London , 1986), p.198

[222] Case 9

[223] Case 42

[224] Case 45; E.C.P C1/442/28

[225] Mondeville, Chirurgie, p.111

assured of his fee he cannot concentrate on the case". [226] Gaddesden also implies the problem with fee collection when he suggests that, when using a particularly effective and fast-acting remedy, the physician insist upon payment in advance, and John of Mirfield quotes an amusing and apt verse in his Breviarium Bartholomei,

> Whilst groan the sick with pain, the doctor must be sure
> To pocket his reward or gain a pledge secure.
> Whoever this defers until the patient's health should mend,
> Demanding then his fee, doth lose the name of friend. [227]

In the cases studied some fees are paid fully in advance, while in other cases patients are more cautious and only part of the fee is paid in advance. Part payment appears to be more usual and in some cases the sum is merely agreed in advance. Those fees paid in advance include a "reasonable fee" for cure of a wounded hand paid to John Swanlond, 1 ½ marks for the cure of an arrow wound, 56s 8d received by Thomas Butolf for ringworm treatment and 40s paid to Matthew Rillesford to attend a canon's wounded leg. [228] These are not merely small fees but quite sizable amounts in at least one case. Those fees partially paid in advance range from small amounts to large. The sum of 12d paid by Roger atte Hache to Roger Clerk in return for a charm for his wife's fever was to be followed by a larger sum in the event of a cure, as was the 9d paid to Roger of Eltisley for a cure for baldness, whilst Matthew Rellesford was paid 5s of his 10s fee beforehand and Balthazar de Gracey received a third of his £10 fee, £3 6s 8d, in advance. [229] With regard to fees agreed in advance, Alice of Stokynge agreed to pay ½

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[226] ibid., p.112
[227] Gaddesden, Rosa Anglica, p.291; Mirfield, Breviarium Batholomei, p.73
[228] Cases 22, 29 and 35
[229] Cases 26, 4, 36, and 45

mark to John of Cornhill for curing an unspecified complaint of her feet. [230] John Roper, one of Matthew Rellesford's litigious patients, (this practitioner was the subject of two malpractice complaints in the same year), agreed to pay a fee of 40s after treatment for the stone and John Dobson appears to have agreed to pay £10, although the securing of securities of twice that by his surgeon before embarking on a cure for palsy would suggest that his practitioner was the more cautious and wilier one. [231]

The cost of litigation.

Promises of payment of fees was one thing, extracting the full fee and keeping it was another. Medieval patients were not always eager to settle up immediately, if at all. Mondeville states somewhat bitterly that he "never found a man rich enough or rather honest enough, whatever his status, religious or not, who had been willing to pay what he promised without being compelled and urged to do so ". [232] He also singles out a particular group in his classification of patients for their bad payment record, "there is a class embracing those who are notoriously bad payers, such as our nobility and their households, government officials, judges, baillies and lawyers whom we are obliged to treat because we dare not offend them, in fact the longer we treat these people the more we lose, it is best to cure them as quickly as possible and to give them the best medicines. [233] Mirfield tells a story to illustrate how preoccupied a practitioner could become with fees owed, that of a physician who had been owed the sum of £13 in fees for three years and who, when on his deadbed and asked to

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[230] Case 9
[231] Cases 36 and 44
[232] Mondeville,Chirurgie, p.113
[233] ibid., p.110

confess his sins could not answer anything except "Thirteen pounds" and "Three years". [234]

The fees cited above are in many cases not inconsiderable amounts, thus it is understandable that some patients should try to avoid paying them or at least paying the full amount. Some like William Robynson simply refused to pay. William Parouns, the surgeon who cured Robyson of the pestilence afflicting him, was forced to appeal to Chancery in an effort to collect the 20s owed him for medicines and the generous reward for his labour and attendance that he was promised by his patient. [235] Balthazar de Gracey received only the first installment of his fee, and even this was demanded back by the patient's employer, the Bishop of Ely. [236] The case of Eric de Verdica seems particularly unjust. Despite professional misgivings he agreed to treat Alice, the wife of a London man, William Stede. Satisfied with his treatment she gave him 20s for his labour. However, her husband then took out an action of trespass against him and James Walle, the warden of the London Grey Friars, declaring that they had wrongfully taken 1 mark from him. De Verdica had no recourse to this at common law as a wife had to have her husband's permission to give away his goods or money, if not it was considered to have been taken from him unlawfully. [237] Roger le Leche of Colchester however, must gain full marks for persistence, for

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[234] Mirfield, Breviarium Bartholomei, p.131

[235] Case 42

[236] Case 45

[237] Case 39. This is not the only difficulty he experiences in claiming fees from patients, Rawcliffe cites another law case involving him where it is claimed his inability as a foreigner to speak English enables his patients to cheat him of his fee.
Rawcliffe,Medicine and Society, p.111; E.C.P., C1/64/154

between 4th October 1333 and 19 September 1334 he tried seventeen times to recover a debt from John Brihtich without discernable sucess. [238]

Others more commonly used accusations of malpractice and other such litigation to try to get money back and even make a profit. Accusations of malpractice were hard to disprove for the medieval medical man, although John Barber, one practitioner thus accused, does indeed offer to prove his innocence. [239] Therefore, an accusation of malpractice was one way a patient disatisfied or disinclined to lose the amount of the fee could seek to reclaim it and even claim damages as well. Giles Polliver, a London man, had John Conyers, the physician who treated his child arrested on grounds of trespass c.1518 after apparently paying him of his own free will. [240] The behaviour of Simon Lynde seems particularly suspicious . Lynde, a London man who employed Peter Blank to cure his child of a diseased eye, having failed, as instructed to keep the child from rubbing his eye, brought suit against Blank for trespass in 1492. When this was unsucessful he discontinued it and then when Blank went away he brought another suit against Aldebrandyn of Ieane, one of the men who stood surety for Blank.[241] The fact that he waited until Blank was away to recommence action on the case does not lend validity to his claims.

The cases of Roger Rushenden and John Barber are more heartening, although sued by their respective patients, Mariot, wife of John Broadmeadow, and Richard Erdale, they were acquitted of the charges against them. [242] In the light of Barber's offer to prove that the loss of

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[238] Borough Court of Colchester, i pp.106, 110, 112, 114, 115, 116, 120, 121, 122, 124, 128, 131, 132, 134, 135, 136, 138

[239] ibid., ii, pp.167, 169, 171, 173, 175

[240] Case 46

[241] Case 40

[242] Cases 17 and 21

Erdale's right arm was due, not to incompetent phlebotomy, but to his having worked with it whilst it was still wounded, Erdale withdrew his complaint. In some ways this is a pity as it would have been interesting to see exactly how Barber intended to prove his assertion. In the case of Roger Rushenden, his accusers John Broadmeadow and his wife, Mariot, were claiming such extravagant damages of £100 that it is difficult not to suspect their motives and the validity of their claim, particularly in light of Rushenden's subsequent acquittal on all counts. Most impressive as an example of the practitioner triumphing, and, quite possibly of rampant protectionism, is the case of John Harrow, John Dalton and Simon Rolf vs. William Forest in 1424. In this case the might of the short-lived Cojoint College of Physicians and Surgeons (1423-5) came down upon the complainant and his claim of erroneous and harmful treatment on his injured thumb. [243] Not only are the defendants, who happen to be high ranking officials in the aforesaid guild, exonerated but William is bound to perpetual silence concerning the matter, to preserve the reputation of the slandered practitioners and informed that any defect or mutilation of his hand was due either to the bloody nature of the constellation Aquarius under which he wounded his hand or some defect of his own.

When the amounts of damages claimed by some patients are considered the suspicion that they, if not seeking to defraud their practitioner, were at least seeking to make a profit, arises. Some of the sums claimed seem disproportionately large in comparison to the fees charged, for example, those claimed by Mariot and John Broadmeadow, or John Roper who claimed £40 damages after paying half of a 10s fee to Matthew Rellesford

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[243] Case 34; See M.T.Walton, "The Advisory Jury and Malpractice in Fifteenth Century London -the Case of William Forest", J.H.M.A.S., 40 (1985), 478-82

for treatment of an *anoncomo* on his foot. [244] Unfortunately it is not possible to define whether the amount of the fee bears any relation to the amount of damages demanded as work on this area of legal history is scanty. Milsom says of the subject that, "until the eighteenth century, for the most part, indeed until the nineteeth, damages were entirely for the jury's decision".[245] Not only were there no rules about measure there was no way of discovering how the juries had made their measurement . According to Pollock and Maitland, juries should not give more than what was demanded, and Potter states that a judge could reject a sum he considered disproportionate. [246] In the case of Nicholas Bradmore and Richard Asser however, the jury's award of 60s was increased by the judge to 80s (£4), probably, as Rawcliffe suggests, because he mistakenly assumed that his earnings were comparable to John Bradmore, a royal surgeon and probably a kinsman of Nicholas. [247] This sum although substantial is still only a tenth of what was demanded by the plaintiff.

The cases do not always provide information on all three areas of fees, the amount of damages demanded, and the amount of damages received but generally at least two of the three appear, usually the fee and the amount of damages demanded. From these it is possible to see that there is usually a considerable markup from the former to the latter. John Warner for example, having paid 1½ marks in fees to Thomas the Leech, demanded £10 in damages, although he had been forced by reason of Thomas abandoning the treatment, to pay another physician £5 to complete the treatment. [248]

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[244] Case 36

[245] Milsom, Historical Foundations, p.162

[246]Pollock and Maitland, The History of English Law, pp.218-9; A.K.R. Kiralfy Potter's Introduction to English Law and it's Institutions 4th ed. (London, 1962) p.331

[247] Case 32; Rawcliffe, Medicine and Society, p.141

[248] Case 12

The Prior of Guisborough and his canon demanded £40 for a 40s cure, and William Stede, having claimed that the fee of 20s paid to Eric de Verdica by his wife Alice had been given without his permission and thus unlawfully, claimed 10 marks in damages. [249] Robert de Skyrne is seemingly more reasonable, for the failure of a cure, the fee for which was 56s 8d, he demanded 100s damages. [250] The amount of £40 arises more frequently than any other. From a selection of fifteen cases that cite amounts of damages claimed, there are four demands for this amount. John Roper, as stated above, demanded £40 having paid just 5s and the Prior of Guisborough also demanded that amount having paid 40s. [251] This could just be coincidence or it may be that this amount was considered by attorneys and plaintiffs to be a suitably middle of the road figure to base their claim on.

The damages received by plaintiffs however, rarely match their demands. John, son of John of Eltisely claimed ½ mark for Roger Barber's failure to stay and treat his baldness and got it, but he is the only one. [252] John Warner is unfortunate in his claim, whilst he does indeed receive damages of £2, having paid Thomas the Leech 1 mark (13s 4d), this does not cover the cost of the £5 fee of the second practioner whom he had to consult. [253]

The award of damages was supposed to reflect the degree of loss and injury suffered (literally in these cases) and some cases reflect this. For example, whereas both Alice Stokynge and Thomas Birchester claimed 100 marks in damages (£66 13s 4d), Alice got almost half of what she claimed,

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[249] Cases 35 and 39
[250] Case 29
[251] Cases 35 and 36
[252] Case 4. This may seem a small amount, (a half mark was 6s10d) but given that John paid 9d in fees it is quite respectable.
[253] Case 12

£30 16s 8d, while Thomas merely got £10. [254] This may reflect the fact that Alice's condition was said to have become incurable, and she became unable to walk due to John of Cornhill's intervention, whilst that of Thomas merely worsened, and the practitioner also claimed that he did not undertake to cure a complaint underneath the skin. Also John of Cornhill broke into Alice's house and stole items to make up his fee.

The practitioners and their patients.

These cases of medical malpractice however, not only provide information on basic aspects of the interaction of practitioner and patient such as fees and contracts, they also provide information on the type of person who came for treatment, their complaints, the treatment they received and the circumstances under which they received it. Also provided is information which allows some insight into less tangible subjects such as the social relationship between them and their attitudes to each other.

a) Patients.

The cases studied here show a varied range of people seeking medical attention. The majority of patients whose occupations are named are urban craftsmen who might be expected to be moderately prosperous and thus able to afford medical treatment when necessary . These include a merchant [255], a miller [256], a pinner (either a wiremaker or a trapper of small animals) [257], a skinner [258], a warner [259], two barbers [260], a tailor [261], a horsekeeper [262], a

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[254] Cases 9 and 30
[255] Case 1
[256] Case 14
[257] Case 24. Note that in this case the profession belongs to the father of the patient not the patient himself.
[258] Case 2
[259] Case 12

stationer [263], a vintner [264], a yeoman [265], a canon [266] and a parish priest [267]. However, as a whole, most patients are identified by their names only, so the possibility of ascertaining whether the practitioners of certain trades were prone to certain injuries or illnesses is not really viable. The patients are mostly men, but there are six women patients, Alice of Stokynge; Mariot, wife of John Broadmeadow; Agnes, wife of Robert of Stratton; the unnamed wife of Stephen Taylor; Johanna wife of of Roger atte Hache and Alice, wife of William Stede. [268] There are also two children treated, the son of Simon Lynde and a child of unspecified sex of Giles Polliver. [269]

The paucity of evidence for female patients in comparision to male is not wholly unexpected and must not be taken at face value as indicating a lack of recourse by women to the medical profession. Of the six cases involving women patients it should be noted that five are brought by the women's husands, the exception being Alice of Stokynge. [270] During this period the position of married women with regard to the law was subordinate to that of their husbands at all times. English common law held that a married man was solely responsible for all debts and allegations concerning his wife whether he was involved or not. In her study of medieval female medical practice Monica Green notes that there is evidence of men being accused of, and fined for, crimes and offences such as unlicensed brewing and brothel

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[260] Cases 31 and 32
[261] Case 37
[262] Case 38
[263] Case 40
[264] Case 46
[265] Case 42
[266] Case 35
[267] Case 44
[268] Cases 9, 17, 22, 23, 26 and 39
[269] Cases 40 and 46
[270] Case 9

keeping which had in reality been commited by their wives alone. [271] The case of Alice Stede and Eric de Vedica illustrates this perfectly. [272] Married women could bring appeals in very few areas. These areas concerned assault and injury either to themselves or to their male kin, particularly where such injury resulted in the death of a husband. Therefore litigation of the type studied in the cases of married women would have to be brought either jointly with their husbands or solely by the man and thus the female participant could easily become invisible in the records of the court. The position of unmarried women was better, as was that of widows, with no husband to stand for them in court, they were allowed to bring their own actions and on the downside, were considered accountable for their debts and crimes. The case involving Alice of Stockynge appears to have been brought by the woman in question, and as she is not cited as being the wife of anyone this could either indicate that she was unmarried, and thus in a position to bring suit in her own right, or that the additional crime of theft alleged against John of Cornhill constituted assault in some way. [273] What must also be considered however, is the possibility that for a variety of ailments, particularly gynaecological problems, women were reluctant to consult male practitioners or unable to do so, many male practitioners prefering a less than 'hands-on' approach in this area. Instead they may have consulted female practitioners and midwives who themselves were not immune to the male bias of the legal system.

b) Practitioners.

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271 M. Green, "Documenting Medieval Women's Medical Practice" in Practical Medicine From Salerno To the Black Death, ed. Garcia Ballester *et. al.*(Cambridge, 1994), p. 327

272 Case 39

273Case 9

The range of practitioners consulted by the patients in these cases would appear to represent the entire spectrum of medical recourse. The most prevalent type of practitioner consulted is the surgeon, hardly surprising considering the manifest nature of his sphere of treatment. Fourteen surgeons appear as direct participants of one form or another in litigation and a further eighteen make an appearance as expert witnesses. [274] Leeches come next; there are eight cited directly in these cases but unsurprisingly, considering their informal status, none appear as expert witnesses. [275] More surprising is the comparatively large number of physicians who appear in these cases, seven as participants and five as expert witnesses. [276] Of these twelve however, seven are situated in London and one in Oxford, areas where it is most likely that university-trained practitioners might be found. Barbers and barber-surgeons number three apiece with two additional barber-surgeons acting as expert witnesses. [277] The apothecary who, having misguidedly attempted to step out of the boundaries of his trade, appears in court, is not unprecedented, since many apothecaries did more than provide remedies prescribed by more legitimate practitioners. [278] However, the appearance of his fellow tradesman, Matthew Belton, as an arbitrator in litigation concerning a Yorkshire leech, Matthew Rillesford, is unexpected, posing as it does some interesting questions concerning the relevant status of the two categories. [279] Lastly there are three clerics who are seen to be

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[274] Cases 9, 15, 16, 18, 22, 34, 36, 38, 40, 41, 44 and 45
[275] Cases 14, 22, 23, 30, 32, 33, 36 and 37
[276] Cases 1, 8,14, 19, 22, 24, 34, 41 and 42
[277] Cases 4, 21, 27, 30, 31, 32 and 34
[278] Case 15
[279] Case 35

practising medicine in various ways, one of whom seems to be little more than a quack peddling false charms to the credulous. [280]

This selection is illustrative of the wide range of practitioners that people applied to for relief, encompassing not only university-trained physicians and guild sanctioned surgeons and barber-surgeons, but leeches whose status was less formal. However, their status was formal enough to be held responsible for the results of their actions despite the medieval medical establishment's disapproval of their practice.

Once again there is a marked absence of the female element in the evidence. The female medical practitioner suffers a similar fate to the female patient in that the legal system during this period masked female participation in this area. To assume from the evidence presented by these legal records and others that women did not practice medicine and surgery would be foolish as many other types of records such as guild records, civic records, those of religious houses and even contemporary medical texts prove otherwise. Midwifery for example, was an almost entirely female area of expertise as was grudgingly acknowledged by contemporary medical writers such as Guy de Chauliac. [281] Nursing was also an area relegated to women, particularly the religious, and the care and general health of a household was the responsibility of its mistress. In the fifteenth-century excerpts from medical literature such as Soranus' Gynaecology and Trotula amongst others were translated into the vernacular which would have facilitated access to such texts by literate women. [282]

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[280] Cases 26, 28 and 39

[281] Chauliac, Cyrurgie, p.530. The role of midwives and wisewomen within the legal system as a source of expert testimony is discussed earlier in the study.

[282] Soranus, Gynaecology, ed. O. Temkin, (John Hopkins, 1956); Trotula of Salerno, ed B. Rowland, Medieval Women's Guide to Health; the First English Gynecolgical Handbook (Ohio, 1981); Rawcliffe, Medicine and Society, pp.187-9

The exclusively male and clerical nature of the universities barred women from becoming physicians, but the Barber-Surgeons' guilds do not have appeared to have excluded women in the earlier middle ages at least. Until the mid-fifteenth century the guilds of York, Lincoln, Bristol, Norwich and Dublin applied the same regulations to both male and female barbers and barber-surgeons. [283] Indeed, one of the practitioners cited in this study, Nicholas Bradmore, had a female apprentice, Agnes Woodcock, whom he remembered generously in his will in 1417. [284]

Many female practitioners must also have fitted into the category of the leech, unlicensed medical rather than surgical practitioners supplying cheap and accessible medical care to those who could not afford or did not care to go to a physician or surgeon. Indeed this is probably where the bulk of female medical practice was to be found. Pernell, wife of Thomas de Rasyn, leech, is recorded as having worked in conjunction with her husband and in 1350 was jointly accused and then pardoned with him of having, by their ignorance, caused the death of John Panyers, a miller from Sidmouth in Devon. [285] This husband and wife partnership may provide one explanation for the absence of women in the records studied here. As Green discusses in her illuminating study, the tendency of women to marry into a trade meant that many female medical practitioners worked in partnership with their husbands and as married women were well-nigh invisible in the eyes of the law. [286] She questions the assumption that the lack of occupational titles of medieval married women in various records designates them as merely

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[283] Rawcliffe, Medicine and Society, p.197; English Guilds, ed. T.Smith, L.T.Smith and L.Brentano., E.E.T.S.,90 (1890), p.27; York Memorandum Book (1376-1419), pp.207-10; Little Red Book of Bristol, ii, p.139

[284] Rawcliffe, Medicine and Society, p.188

[285] Case 41

[286] Green, "Medieval Women's Medical Practice", pp.327-32

housewives and asks, " can we assume at the other extreme, that besides every male we can label surgeon, apothecary or barber, we would find a wife who was aiding him in his craft, perhaps to the extent that she might practise it independently upon his death?". [287] This, whilst a worthwhile conjecture, is of course impossible to prove. The truth is probably midway in between, that a large percentage of practitioners were aided, at least in part, by their wives. Continuation of medical practice by the widows of medical practitioners was not uncommon. Green notes that the phenomenon of women whose medical practice was not hitherto recorded, beginning to do so after the death of their husbands could be explained in this way. [288] However, the increasing professionalisation of the medical profession led to an increase in the persecution of its vulnerable members such as the unlicensed practitioners and women and thus women in general as guild members became rarer. Although in York a general by-law of 1529 permitted the widows of tradesmen and craftsmen to continue in their husband's professions, such protection and encouragement was far from the norm. [289] Also, should a woman take on her husband's craft after marriage, there is the possibility that the widows of medical practitioners who continued to practise without their husbands would, when remarrying, abandon their practice for their new husband's trade.

As for unmarried women, the low profile of midwifery and nursing on the medical scene and the fact that through bias and social circumstance female practitioners were condemned to the lower orders of the profession (even upper-echelon licensed surgeons suffered in comparision with the elite class

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[287] ibid., p.330
[288] ibid., p.330
[289] Rawcliffe, Medicine and Society, p.189

of physicians) means that, for the most, part evidence and details of their practice eludes the historian. However, it is possible to be confident that medical practice, particularly at the lower end of the scale, was not entirely a male preserve, though the bias of the contemporary legal system results in the failure of this study to demonstrate this.

Ailments and their treatment.

a) Ailments.

The range of ailments treated is also wide. When they are identified, (the terms 'bodily infirmity' or 'malady' occur fairly frequently), they cover a spectrum from the seemingly trivial such as John, son of John of Eltisley's baldness [290] to the much more serious and painful stone [291]. Wounds and injuries, both accidental and deliberately inflicted , usually on arms and legs, seem very prevalent, perhaps a sign of the rigor and roughness of medieval life. [292] When cases of wounds arise they are often clearly identified as accidental. Presumably should an account of a wounding or injury come to the notice of the courts, its origin would be enquired into. [293] Many complaints identified are surgical, in that they are dealt with by surgeons although not necessarily involving an actual operation. Surgical failure and malpractice was most manifest as Henri de Mondeville stated in his Chirurgie.

> "The doings of surgery are visible and manifest whilst those of medicine are hidden, which is fortunate for many physicians. if they have made a mistake, and if they kill the patient, it will not be done openly, but if the surgeon commits an error while performing an

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[290] Case 4

[291] York Memormanda Book (1388-1493), p17

[292] Cases 3, 5, 6, 7, 12, 15, 17, 18, 22, 28, 30, 32, 35 and 38

[293] Cases 28 and 32

incision on the hand or arm, this is seen by everybody present and could not be attributed to nature nor the constitution of the patient." [294]

Other ailments cited include fever [295], a case of leprosy or *salsefleume* [296], two diseases of the eyes [297], several cases of pox or pestilence [298], two cases of stone [299], palsy of the left side (a stroke) [300], a facial sore [301], ringworm [302], *colico passio* (an illness of the colon)[303], and a complaint referred to as an *anoncomo*, probably a growth or ulcer on a man's left foot [304].

b) Treatments.

The range of disease and injury cited above covers a wide range and the therapuesis used to treat these complaints displays a similarly wide range. The treatment available for the alleviation of the complaints cited in these cases include the use of internal and external medicines, dietetics, surgical operations, cautery, phlebotomy and even faith healing. Medicines are applied to a foot condition,[305] to two diseased eyes, [306] to ringworm, [307] for pestilence [308] and corrosives are used to treat an *anoncomo* on a man's foot

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294 Mondeville, Chirurgie, p.72. However, this is not entirely true as the case of William Forest's injured thumb demonstrates, see case 34.
295 Cases 1 and 26
296 Case 33
297 Cases 22 and 40
298 Cases 39, 42 and 45
299 Cases 31 and 36
300 Case 41
301 Case 25
302 Case 29
303 Case 23
304 Case 37
305 Case 36
306 Cases 22 and 40
307 Case 29
308 Cases 11, 39, 42 and 45

[309]. In one case medicine is supplemented by the advocation of a dietary regimen. [310] Pills are prescribed for a fever and plasters are applied for hair loss. [311] Surgical techniques are also well represented in the panoply of treatment. Arrangements are made between two barbers to treat the condition of stone by a surgical operation. [312] Cautery is applied to staunch excessive bloodflow [313]and phlebotomy is used in several cases as part of a course of treatment[314]. Lastly the aspect of faith-healing appears in the form of a charm used for relief from non-specific bodily infirmities. [315]

However, the treatment received by the patient is not always specified. Often it is just stated that treatment was careless or negligent and the results of this negligence are cited, for example the area being treated was allowed to become corrupt or rendered incurable. Usually when the treatment is specified, it is because the patient definitely attributes the worsening of his condition to that specific part of the treatment rather than the whole treatment. Careless bleeding is cited as resulting in loss of limb in the case of John Barbour and Richard Erdale in 1365. [316] It is also alledged to have caused 'dangerous weakening', when applied to John Bittern by Simon Barbour in 1384 [317] and cautery, employed to stop excessive blood loss, resulted in maiming in the case of William Forest and his wounded right thumb in 1424. [318] Both Alice of Stokynge in1320, and John Roper in

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[309]Case 36
[310] Case 35
[311] Cases 1 and 4
[312] Case 31
[313] Case 34
[314] Cases 2 and 21
[315] Case 26
[316] Case 21
[317] Case 27
[318] Case 34

1443, attributed the worsening of their conditions to the medicaments applied by their practitioners. [319] On the subject of phlebotomy this procedure was known, and seemingly accepted, at least by the authorities, to have potentially fatal results. In 1278, in London, William le Paumer, a skinner, was judged by jurors at a London inquest to have died due to being greatly weakened by inexpert bloodletting the previous day but no one was actually blamed for this death. [320] Significantly, contemporary text books are quite specific on the dangers of phlebotomy and on who should and should not be phlebotomised and when.[321]

c) Location of treatment.

As to where treatment was applied, it would seem reasonable to suppose that most patients either received it in their own house or visited the physician or surgeon and then went home. Contemporary illustrations show physicians by the bedside of patients with their household around them and texts describe the etiquette of house calls. [322] However, there are references to patients staying in the house of the physician or surgeon during treatment. For example, in 1386, it is claimed by Henry Thorne of Petherton that John Russell of Shepton was supposed to stay with him whilst his shin was being treated and Alexander Mertyn was at bed and board at Balthazar de Gracyes for a month at a rate of 3s 4d a week. [323] This was probably for intensive treatment of serious cases so that the physician/surgeon could devote all his time and attention to his patient.

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[319] Cases 9 and 37

[320] Case 2. Some law codes, such as those of 13th century Iceland, exempted those who practised phlebotomy and cautery from the penalties imposed on those found guilty of mayhem or murder. Rawcliffe, Medicine and Society, p.65, fns. 28-29

[321] Lanfranc, Science of Cirurgie, pp.298-301; Chauliac, Cyrurgie, pp.536-7

[322] Arderne, Fistula in Ano, pp.4-5

[323] Cases 28 and 45

The case of John Dobson, also shows that people were prepared to travel to receive medical care.[324] In search of a cure for palsy Dobson came from Melbourne in Cambridgeshire to London, which would probably have been a journey of several days for a sick man in a horse litter. There is also a record in the Coroners' Rolls of the City of London, in 1300, of the death through illness in Billingsgate of William Wattepass, an Essex man who came to London to be cured of an arm wound. [325] In the same records Thomas, son of William of Hoddesden is stated to have died of a poinard wound to the brain which he was brought to London to have treated in 1330.[326] That the search for medical expertise seems to have led patients to London is hardly surprising as the city had the largest concentration of physicians and surgeons.

Practitioner/patient relations.

The relationship between practitioner and patient is also illuminated by study of the cases in the database. Information on areas such as the attitude of patients towards the advice and treatment given by the practitioner, their expectations of him or her and their evaluation of a cure comes to light.

a) Patient attitudes and expectancy.

The attitude of the patients in the cases discussed here ranges from the sceptical and down right critical, such as the case in 1443 when John Roper alleged that Matthew Rellesford treated the *anoncomo* on his left foot wrongly with obviously dangerous medicines [327], to the gullible, as demonstrated in 1382 when Roger Atte Hache and his wife Johanna pay 12d in advance for a gold wrapped 'charm' from Roger of Wandsworth, an

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[324] Case 44
[325] Case 1
[326] Case 5
[327] Case 37

illiterate clerk [328]. Far from being cowed by the medical man's supposed knowledge, medieval patients do not seem to hesitate to question his treatment or ignore his advice whilst still complaining of the adverse effects of this behaviour. In 1365 for example, Richard Erdale worked with a wounded arm then blamed the loss of it on John Barbour's bleeding. [329] Significantly however, he does not renew the case in the face of a fresh jury.

There are also several complaints by practitioners that patients had not followed their instructions. In c.1492 Peter Blank, surgeon, responded to Simon Lynde's accusation of malpractice in the attempted cure of his child's eye, by saying that they had not prevented the child from touching and rubbing it as he had insisted they should. [330] Andrew le Sarazin and his valet overdose on pills prescribed by John of Hexham and his brother, Simon, in 1276, [331] and dietary advice given to a Guisborough canon by Matthew Rutherford in 1433 was ignored and medicines prescribed by him were not taken[332].

Despite this apparent lack of respect for their physicians' instructions, it can be seen from several cases that some patients had not only faith in the practitioner's ability to cure, but also a fairly specific idea of what that cure was to constitute. For example, in c.1364 Ralph Fryday's belief that John West of Leicester was capable of healing his arm, broken in an ambush, seems to have been such that when the desired cure was not forthcoming but the arm instead mortified and became incurable, he asserted that John had deliberately mistreated it at the instigation of his, Ralph's, enemies to

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[328]Case 26
[329] Case 21
[330] Case 40
[331] Case 1
[332] Case 35

achieve this result. [333] However, in contrast, John Dobson the priest of Melbourne's contract with John Brown, a London surgeon, concerning the cure of the paralysis of his right side seems to show a degree of considered realism and even comparative pessimism. [334] It stipulates that Brown should heal him so that he might walk with a stick, move his arm and say mass and do other things which pertained to his work. In short he did not expect a total cure but enough of one to enable him to continue his job and life with less difficulty. It would be reasonable if this was the average expectation of the medieval patient. Certainly most cases studied here seem not merely to allege a failed cure but an actual worsening of the condition to an extreme point. However, contracts such as that of Balthazar de Graceys and Alexander Mertyn seem to specify the outlines of the cure to an almost unreasonable point. [335]

b) The attitudes of practitioners towards their patients.

Practitioners' atttitudes to patients and practice are also revealed to some degree. There would seem to be a significant degree of caution exercised in dealings with patients. Some practitioners are shown to be reluctant to undertake to cure ailments that are out of their range of competence or to treat conditions that are beyond hope of cure. This reflects the admonishments of contemporary texts which advise against undertaking to cure conditions which appear to be likely to be terminal . John of Gaddesden stated that, "the surgeon ..... should leave the sick man alone rather than operate if there is any doubt, for it is safer to leave a man in the hands of his Creator than trust in surgery or medicine concerning which there is any

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[333] Case 18
[334] Case 44
[335] Case 45; E.C.P., C1/442/28

manner of doubt". [336] John Arderne advised that the practitioner should always examine the condition before undertaking to cure it and that he should always have a stock of seemly excuses to put off unwanted patients.[337] Guy de Chauliac lists three cases in which a cure should not be attempted: firstly, when the ailment is of itself incurable such as leprosy; secondly, when the disease itself is curable but the patient's circumstances and other conditions render it otherwise, and lastly when the cure should cause a worse condition (*iatrogenic sequelae*). [338]

Eric de Verdica showed himself to be mindful of these warnings in his treatment of Alice Stede in 1485. By all accounts he was not eager to treat her, she was of great age, grieviously sick and likely to die (the likelihood of her death and his religious status , he was a friar, may have contributed to his unwillingness to treat her) However, at her entreaty and that of her friends he agreed to treat her. [339] His treatment seems to have been concerned with easing her condition rather than curing it and he refused to treat all of her complaints, advising that she consulted a surgeon for the disease in her leg, part of which was eaten away. Thus he treated her within the area prescribed by his competence and calling and recommended that which he would not treat to the care of another competent practitioner. It should be noted that in this case the validity of the treatment is not called into question but merely the validity of the payment which is denied by her husband.

There are other cases where practitioners at least show a conciousness of what is within their competence and what is not, although in some of these

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[336] Gaddesden, Rosa Anglica, p.131
[337] Arderne, Fistula in Ano, p.5
[338] Chauliac, Cyrurgie, p.3
[339] Case 39

it would appear that their protestations are employed to counteract malpractice charges. John Luter for example, is a case in point. In answer to a charge of fraudulently undertaking to cure leprosy, he unconvincingly maintains that he accepted the patient's own diagnosis of *salsefleume* rather than diagnosing leprosy, generally held to be an 'incurable disease'. [340] Whether or not they are based on truth, Lewis Lombard's claims that he did not undertake to cure an injury under the skin of Thomas Birchester's groin but an illness in his stomach, seem to indicate at least that he was aware that the two complaints fell within different levels of competence. [341] John le Spicer however, would appear to have overstepped the bounds of his competence and authority in his treatment, or rather mistreatment, of Thomas de Shene's facial wound. [342] As an apothecary he had no business to be treating such a complaint. Many apothecaries however, did undertake tasks more suited to medical practitioners, and his lack of expertise is testified to by a board of medical practitioners who assert that in attempting to cure he had exacerbated the problem and rendered it incurable.

As can be gathered, the relationship between patient and practitioner was not always a straightforward one. There was infinite room for complication and abuses both intentional and unintentional on both sides. That the sick and wounded were preyed upon by unscrupulous practitioners or those who claimed to be such is without doubt. Cases such as that of Roger Atte Hache and Roger le Clerk are ample demonstration of this, as is the case of John Luter and John Clotes and that of John of Cornhill and

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[340] Case 33. The social repercussions of a diagnosis of leprosy were horrific, and thus there were rich pickings to be had by those unscrupulous practitioners who preyed upon its unfortunate victims, offering to cure the uncurable.

[341] Case 30

[342] Case 15

Alice of Stokynge.[343] There are indications however, that occasionally the practitioner was the victim of the unscrupulous or disappointed patient. The main problem seems to have lain in the perception of cure. It is easy to imagine that, given a desire to complain, the average patient could, given the limits of medieval medicine, find something to complain about and turn it into grounds for litigation or the withholding of fees.

[343] Cases 26, 33 and 9

CONCLUSION

The purpose of this study has been to illustrate the extent to which medieval medical malpractice litigation can be used as source material to illustrate the various workings, and the social and legal interaction of the medieval medical profession with medieval society. In the cases studied there is definite evidence of a consistency in behaviour in all types of practitioners concerning the payment of fees and the widespread use of treatments described in contemporary texts and accounts. Through examination of the cases in the database the voice of the patient, often hard to discern unless at its most carping, has been amplified to a certain extent, giving insight into the process and concept of healing in this period from a more uncommon angle. Whilst the cases in the database are highly selective in nature, they afford a general impression of this interaction which I am confident would be borne out by more extensive work in this area, and it is hoped that this study has gone some way to demonstrating what a rich and fruitful source of information such litigation can be.

Study of contemporary legal texts shows that the role of medical practitioners within the legal system was minimal, little use being made of practitioners in areas which would seem to demand their involvement or expert opinion. The assessment of wounds, causes of death, cases of dangerous or infectious diseases such as leprosy, cases of putative pregnancy and of mental illness was in the main performed by laymen. Most probably this was a result of the scarcity and uneven distribution of medical practitioners during this period. However, practitioners figure frequently within the legal system as the subjects of litigation brought by patients or

as litigants themselves, usually seeking remuneration from defaulting or dissatisfied patients.

During the thirteenth and fourteenth centuries there was observed to be a general increase in litigation. Of the forty-six cases in the database, thirty date from this period, and twenty-seven from the fourteenth-century, showing that this upsurge in litigation did not bypass the medical profession and its practitioners. This increase in medical malpractice litigation is essentially reflective of the litigious nature of the times and of the results of the procedural innovations in the legal system which facilitated easier access to the law. However, there also seems to be an increase in the willingness of laymen to criticise the medical profession and its practitioners. The fourteenth and fifteenth centuries saw the production of a variety of vernacular public health tracts, and the advent of the Black Death produced its own genre of medical literature, plague tractates. Towards the end of the fifteenth century, and with the advent of printing, vernacular versions of medical texts became increasingly common. Thus it may be suggested that the literate layman was better able to be informed on medical matters, (the subject of a man's health being a perenial source of interest to him), his expectations were heightened and he was more able to criticise. His willingness to do so was never in doubt. The apparent inadequacy of the medical profession in the face of the Black Death may also have encouraged a more critical and sceptical lay attitude towards its practitioners. [344]

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[344] Interestingly, Chapman attempts, briefly, to draw a link between the upsurge in litigation and the advent of the Black Death in 1348. He cites two contemporary sources which claim that the number of disputes and lawyers in England was less before the plague than afterwards and that it was the increased likelihood of death and the need to write and dispute wills which caused this increase in lawyers. Chapman, " Stratton vs Swanlond", p.20

Of the cases studied, those which predominate concern men both as patients and practitioners. Treatment given to male patients by male practitioners, most often surgeons, is by far the most prevalent. These patients are usually from the urban professional or artisan classes and by implication relatively wealthy, though the evidence shows them often to be reluctant to pay the promised fees.

The comparative lack of female practitioners and patients, one and six respectively, would initially seem to indicate that firstly, women did not consult doctors and secondly, women did not practice medicine. Other sources provide evidence to the contrary and whilst the numbers may by no means be comparable with those of male patients and male practitioners, the picture is by no means as one sided as this study would suggest. As Monica Green illustrates, the bias of both the legal system and legitimate medical profession towards the male segment of the population, in combination with social and economic factors, has the result of concealing female involvement in both areas. [345]

The poor and rural sections of medieval society are also sparsely represented. Though several cases originate in rural areas in local courts such as the fair court, lack of money, or of access to professional medical care and the growth of higher courts have resulted in a paucity of evidence from this sector of society.

The diversity of medical recourse (concerning male practitioners at least) is demonstrated, as is the open nature of the 'market', encompassing as it did both licensed and non-licensed practitioners. The whole range of types of practitioner is covered, from university-trained physicians and guild-

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[345] Green, "Medieval Women's Medical Practice", pp.342-52

licensed surgeons, to leeches, apothecaries and even charm-peddling quacks. The category of leech is well represented. These non-licensed practitioners were the recourse of those who could not afford physicians and their appearance in the courts in such numbers demonstrates their firmly established place in the medical market place.

The preponderance of practitioners of surgery, whether treating patients or acting as expert witnesses, is no great surprise given the nature of material studied. There is a pronounced bias towards litigation involving ailments requiring the attentions of a surgeon rather than a physician as the results of treatment, or lack of them, was more manifest than of a physician's ministrations. More surprising is the number of physicians who appear acting in these same capacities, but of the physicians cited in cases, seven are in London and one is in Oxford, both areas where the concentration of physicians would be expected to be higher than the norm.

The growing importance of contracts has become appparent during this study. Relationships between practitioners and their patients during this period appear to become more formalised. Contracts came in two main forms, verbal undertakings between practitioner and patient, sometimes but not always sealed by oaths witnessed by others, and written contracts.

Whilst written contracts between the two parties are not unknown in the earlier part of the period studied, verbal contracts seem to be more prevalent. However, by the fifteenth-century written evidence of contracts becomes more common and litigation without a written contract proved to be problematical. This increasing formalisation of practitioner/patient relationships must surely come in tandem with both the growth in status and organisation of the medical profession, chronicled by writers such as

Rawcliffe and Cosman, and with the development of the legal system and contract law. [346]

Contracts not only became more formal during this period they also seem to have become more specific. Clauses set out criteria and time limits for cures, nature and location of treatment, fees, when and how they are to be paid, and guarantees or sureties for both success of cure and payment. This could be indicative of increased expectancy on the part of the patient and, whilst affording a measure of protection to both practitioner and patient, also paved the way for increasingly specific complaints on the part of dissatisfied patients.

The interaction of the medieval medical profession and legal system is not unique. Before the law, the position of the surgeon or physician was no different from any other craftsman, though the nature of his culpability was not formally expressed until 1337. [347] As a contracted craftsman, the surgeon or physician was expected to acquit himself satisfactorily of the task he had undertaken, and the penalties for failing to do so came in the familiar form of damages, public humiliation and even imprisonment. [348] The question of cure and the conception and proof of it appear to be the main complication experienced by practitioners. In contrast with a badly built barn, or spoilt or missing goods, which were relatively simple to prove,

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[346] Rawcliffe, Medicine and Society, chapters 5,6 and 7; ibid. "Medicine and Medical Practice", In Later Medieval England", 13-25"; ibid. "The Profits of Practice", 61-78; Cosman, "Medieval Medical Malpractice";The Dicta And The Dockets", 23-47 .

[347] This may also be a factor in the increase in medical malpractice cases during the fourteenth century.
Chapman, " Stratton vs Swanlond", p.20

[348] C.L.B, H, p.184; London Eyre 1276, pp.72-3
Kiralfy, Source Book, pp.184-5
Select Cases-King's Bench, viii pp.163-4

a patient and practitioner's conception of cure might vary considerably and the fact of it, particularly in the cases of non-manifest diseases, prove difficult to illustrate. This however, did not deter practitioners as well as patients from going to the law. Ultimately, for those for whom application to medical practitioners failed, the law became the last recourse in the healing process. Lawyers replaced physicians and surgeons, and litigation, acting as a judicial theriac, was increasingly considered as the common panacea.

APPENDIX ONE

A DATABASE OF CASES

No.	Date	Practitioner	Patient	Source
1	1276	Masters John de Hexham and Master Semann	Andrew le Sarazin and his valet Richard Langley	London Eyre 1276, pp.72-3
2	1278	Not cited	William le Pannere	Memorials of London and London Life in the Thirteenth, Fourteenth and Fifteenth-Centuries, ed. H.T.Riley (London, 1868), p.15
3	1283	Anon	Roger the Clerk and unamed other men at arms.	Select Cases-King's Bench, 1, pp.120-8
4	1288	Roger Barber	John son of John of Eltisley	Select Cases-Law Merchant,1,pp36-7
5	1300	Anon	Thomas son of William de Hoddesden	Cal. Coroners' Rolls, Roll D 25
6	1300	Anon	William Wattespas	Cal. Coroners' Rolls, Roll A 1
7	1312	Anon	Anon	Eyre of London,3, p.353

8	1313	Harry Daman - Master	Abbot of Gloucester	Year Book Edward II, pp.80-4
9	1320	John of Cornhill	Alice of Stockynge	Talbot and Hammond, p.137
10	1326	John le Leche	John de Aleston	C.C.R., Edward II, pp588-9
11	1329	Anon	Anon	Kiralfy, Source Book, pp.184-7
12	1330	Thomas the Leech and Master Adam of Suthwyk	John the Warner of Stenyngton	Kiralfy, Source Book, pp.184-7
13	1333	Roger le Leche	John Brihtich	Court Rolls of the Borough Court of Colchester, ed. I.H.Jeayes (Colchester,1841), pp.106-138
14	1350	Thomas and Pernell de Rasyn	John Panyers	C.P.R., Edward III, 1348-50, p.561; Talbot and Hammond, p.35
15	1354	John le Spicer de Cornhulle	Thomas de Shene	C.L.B., G, p.21; Riley,Memorials, pp. 273-4; Talbot and Hammond, p.186
16	1359	John Paladyn and John de Cornhull	Denys de Morebeck	C.P.R., Edward III, 1358-61, p.320

17	1364	Roger Rushenden	Mariot wife of John Broadmeadow	Select Cases of Trespass, 2, pp.422-3
18	1364	John West of Leicester	Ralph Fryday	E.C.P. C1/68/44; Select Cases in Chancery, pp.123-4
19	1364	Simon Bredon - Master	Gerald Rothanis	J.B.Post, "Doctor vs Patient: Two Fourteenth-Century Lawsuits", Medical History, 16 (1972), 296-300
20	1365	Adam Rous Master David, H de Wotton W Taunton	Giles Pykeman	C.P.M.R. 1364-81, Roll A10, memb 11
21	1365	John Barbour	Richard Erdale	Borough Court of Colchester, 2, pp.167-75
22	1373	John Swanlond/Morton	Agnes wife of Robert of Stratton	Kiralfy, Source Book, pp.184-5; Baker, and Milsom, Sources of English Legal History, pp.360-2
23	1375	John Frestone	Stephen Taylor	Borough Court of Colchester, pp.59,67,70,74
24	1377	Richard Cheyndut	Walter, son of John del Hull	C.P.M.R., 1364-82, p.236; Talbot and Hammond p.337
25	1381	Robert Loke of Spalding	Geoffrey Abbot of Bourne	Select Cases of Trepass, 1, pp.53-4

26	1382	Roger le Clerk	Johanna wife of Roger atte Hache	C.L.B, H, R Sharpe, p.184; Annals of the Barber-Surgeons of London, ed. S.Young (London,1890), pp37-8
27	1384	Simon Barber	John Bittern	Select Pleas of Trespass, ii, pp.425-6
28	1386	Henry Thorne of South Petherton	John Russell of Shepton	Select Pleas of Trespass, ii, p.427
29	1388	Thomas Butolf	Robert de Skyne	Baker and Milsom, Sources of English Legal History, pp.362-6; Yearbook 11 Richard II, p223, pl 12
30	1390	Lewis , a Lombard	Thomas Birchester	Select Cases-King's Bench, 3, pp.63-4,
31	1394	John Catlew of York	John de Cartmell of York	York Memorandum Book (1388-1493), p.17
32	1405	Nicholas Bradmor	Richard Asser	Select Cases-King's Bench, 8, pp.163-4
33	1408	John Luter, (Fleming)	John Clotes of Bemelond	C.P.M.R., 1381-1412, Roll A40, p.289
34	1424	John Dalton, John Harwe/Harrow, Simon Rolf	William Forrest	C.P.M.R., 1413-37, pp174-5,Roll A52

35	1433	Matthew Rillesford/ Rutherford of York	Richard Ayreton- Canon of Guisborough	Baildon, "Notes", p.78
36	1443	Matthew Rellesford	George Bayle	Mayors Court Rolls, MC1/3/165, MC1/3/166; Talbot and Hammond, p.213
37	1443	Matthew Rellesford	John Roper	Mayors Court Rolls, MC1/3/161; Talbot and Hammond, p.213
38	1473	John Isyng of Newebury	Gilbert Humfreyson	P.R.O., Exchequer Records, e/315/486 fol.10
39	c.1485	Eric de Verdica	Alice wife of William Stede of London	E.C.P. C1/66/3976
40	1492	Peter Blank	Simon Lynde- his child	E.C.P. C1/187/89
41	1493	John Cokkes- Master,and John Barbour	John Walewyn	E.C.P. C1/45/175
42	1493	William Parouns	William Robynson of London	E.C.P. C1/105/35
43	1504	Jasper Raymart	Thomlynson	E.C.P. C1/350/47; C1/353/26

44	1515	John Broune/Brown of London	John Dobson	E.C.P. C1/131/8; Talbot and Hammond, p.128
45	1515	Balthazar de Graceys of London	Alexander Martin	E.C.P. C1/438/001, C1/442/28
46	1518	John Conyers	Giles Polliver	E.C.P. C1/480/27

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