

# Michigan Law Review

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Volume 41 | Issue 5

---

1943

## SCIENTIFIC PROOF AND RELATIONS OF LAW AND MEDICINE

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### Recommended Citation

John E. Tracy, *SCIENTIFIC PROOF AND RELATIONS OF LAW AND MEDICINE*, 41 MICH. L. REV. 872 (1943).

Available at: <https://repository.law.umich.edu/mlr/vol41/iss5/5>

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## SCIENTIFIC PROOF AND RELATIONS OF LAW AND MEDICINE\*

### INTRODUCTION

*John E. Tracy*†

EVER since lawyers first began the practice of employing expert witnesses in cases where there were questions of fact to be determined, involving the existence and extent and the causes of bodily ailments, these experts—physicians, surgeons, anatomists, chemists, pathologists, and roentgenologists—have been generous in their proffering of advice to the practicing attorney as to the matters to which his preparation for trial should be directed, the proper theories to be adopted by him as to recovery or damages and his methods of examining and cross-examining witnesses of this character. The shelves of any large law library will be found to be filled with texts on this subject by learned men of all nationalities and races. A large number of those works would now probably be regarded as obsolete by the members of the profession; but, in the past twelve years, in this country there have been published at least seven more or less exhaustive treatises on the whole or on various parts of this general subject.<sup>1</sup>

In addition to the treatises by these scientists, there will be found lengthy chapters on anatomy, medicine and surgery, the preparation of medical testimony and the handling of medical witnesses, in various legal practice works, particularly such works as *Schweitzer, Preparation Manual for Accident Cases*<sup>2</sup> and *Trial Manual for Negligence Actions*.<sup>3</sup>

\*A symposium series on law-science problems with particular reference to law-medicine problems. Editor-in-Chief, Hubert Winston Smith, A.B., M.B.A. LL.B., M.D., Associate in Medical Legal Research, Harvard Law School and Department of Legal Medicine, Harvard Medical School.—*Ed.*

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<sup>1</sup> DONALDSON, *THE ROENTGENOLOGIST IN COURT* (1937); ENGLISH, *ANATOMY AND ALLIED SCIENCE FOR LAWYERS* (1941); GRAY, *ATTORNEYS' TEXTBOOK OF MEDICINE*, 2d ed. (1940); GONZALES, VANCE and HELPERN, *LEGAL MEDICINE AND TOXICOLOGY* (1941); HERZOG, *MEDICAL JURISPRUDENCE* (1931); KESSLER, *ACCIDENTAL INJURIES* (1931); SAPPINGTON, *MEDICOLEGAL PHASES OF OCCUPATIONAL DISEASES* (1939).

<sup>2</sup> (1935).

<sup>3</sup> Second edition (1941).

Now has come a most interesting and important new series of contributions in this field. Doctor Hubert W. Smith of Harvard University has persuaded a number of his medical colleagues in all parts of the United States, all well-known experts in their respective fields, each to contribute to a general symposium one chapter on a specific problem in the use of medical facts and theories in legal controversies.

These several articles, amounting in number to nearly fifty, are to be published simultaneously in the April, 1943, issues of a number of leading medical journals and law reviews of which this review is one. The collected articles will probably later be published in book form. But, if they are not so published, the practicing lawyer will be able to find them in any law library which is a subscriber to the leading reviews.<sup>4</sup>

The two articles which are to appear in this review are entitled respectively "Problems of Proof in Claims for Recovery for Dermatitis" and "Medical Facts that Can and Cannot be Proved by X-Ray."

The first named of these articles is by Doctor Louis Schwartz, Medical Director of the United States Public Health Service. It deals, as its title indicates, with dermatitis, the existence of and the causes of which disease will be found to come before legal tribunals in three classes of cases:

(1) In hearings before industrial accident boards, in those jurisdictions where occupational dermatitis is a compensable injury under workmen's compensation laws. By far the greatest number of cases will be found in this class.

(2) Actions by employees against employers, either at common law or under employer's liability statutes.

(3) Actions brought by purchasers of clothing, against retailers or against manufacturers, involving claims of injury by dermatitis acquired from contact with such clothing, in which unsafe materials are claimed to have been used.

The second article is by Doctor Samuel W. Donaldson, roentgenologist at St. Joseph's Hospital, Ann Arbor, Michigan, and author of the well-known work on *The Roentgenologist in Court*.

The purposes of Doctor Donaldson in his article are not only to show what bodily conditions can be discovered and diagnosed by roentgenology but also to show the number of bodily conditions that

<sup>4</sup> A complete list of these articles is published infra, at page 912.

cannot be discovered or diagnosed by that science in its present state of development.

Both articles will have value for the attorney, not only in developing his theory of recovery and in preparing for the examination of his own medical witnesses, but in preparing for and exposing, by intelligent cross-examination, the unsubstantiated guesses of incompetent medical witnesses produced by the opponent. Their publication will be welcomed by the legal profession.