



Nerve and Knowledge

Doctors, Medicine and the Sherlockian Canon

Edited & introduced by
Robert S. Katz, MD, BSI, and
Andrew L. Solberg, MHS, BSI

Order it at: www.bakerstreetjournal.com

232 pages, 9" x 6" hardcover, December 2015
With 17 b&w illustrations

When a Doctor Goes Wrong: Medical Malpractice in the Canon¹

by Clifford S. Goldfarb, LLM and Hartley R. Nathan, LLM, QC

Medical malpractice exists where a treatment given by a member of the medical profession departs from a generally accepted standard of practice and results in injury to the patient, through negligence, ignorance, lack of skill, or malicious intent.² The term is derived from the Latin *mala praxis* (bad practice). The OED cites E. Maynwaring, *Praxis Medicorum* 20 (1671) as the earliest recorded use of the term in the English language. From Blackstone's *Commentaries on the Laws of England* (1765-69), the principal source for the development of English law:

mala praxis is a great misdemeanour and offense at common law...because it breaks the trust which the party had placed in his physician, and tends to the patient's destruction.³

Malpractice as a legal concept has been around for a long time. The earliest recorded malpractice court case in England is *Stratton v. Swanlond*, decided in 1374,⁴ where a physician was sued unsuccessfully for failing to heal a mangled hand. The basic principle established in the case is still the law today: a physician should be liable for harm negligently caused to a patient, but if the physician acts diligently, there would be no liability, even if the patient is not cured.

¹ The writers wish to express their appreciation to Neil Block Q.C., Barrister of Gray's Inn, for his help with the rôle of the barrister and solicitor.

² Oxford English Dictionary ("OED").

³ Blackstone, Sir William, *Commentaries on the Laws of England in Four Books*, (Oxford: Clarendon Press, 1860) Book 3, Chapter 8, "Of Wrongs, And Their Remedies, Respecting the Rights of Persons."

⁴ Reported in Y.B. Edw. 3, fol. 6, pl. 2 (2375) and reproduced in Schedule "A." The report is written in Law French, an archaic language based on old Norman and influenced over time by Parisian French and English. It was used in the courts between 1066 and the start of the 18th century. Sherlock Holmes, through his study of early English charters in "The Three Students," would have been familiar with it.

Nerve and Knowledge – Book Excerpt

The state of medicine during the period when Sherlock Holmes was in active practice as a consulting detective (c.1880-1903⁵) was one of great change, with many new developments in the understanding of the causes of disease and treatment of injuries and many new tools. By today's standards, virtually all medical treatment in the Canon could be considered malpractice. Regulation of the medical profession was not instituted until 1858. The tuberculosis bacillus was discovered by Koch only in 1882. Diagnostic X-rays did not come into use until 1896. Ehrlich discovered salvarsan for treatment of syphilis in 1909. Antibiotics were decades away. Sir Joseph Lister, pioneer of the use of carbolic acid for sterilization, was one of Arthur Conan Doyle's teachers at the University of Edinburgh, where he studied medicine from 1876-81.⁶ Conan Doyle was just starting in practice in the midst of this great upheaval in medical practice, and Watson was only a few years ahead of him.⁷

The law of medical malpractice developed because of "the corruption and inefficiency of England's legal system. A great deal of law enforcement was handled by 'civil society,' through the lawsuits of private litigants rather than the more rigorous apparatus of the state."⁸

It seems strange to us that, with over a century of canonical criticism and exegesis, there does not seem to have ever been an analysis and compilation of medical incidents that might be considered malpractice, not even in the otherwise definitive *Medical Casebook of Arthur Conan Doyle*.⁹ We ourselves are not competent to opine on whether or not there was malpractice in any canonical case. In choosing an example to explain how a medical malpractice case would have proceeded, we are following the suggestion of Dr. Howard Brody who reported on the case of *Hatherley v. Watson*, resulting from the events of "The Engineer's Thumb."¹⁰

⁵ We have chosen to restrict our review to the state of the English Law and practice in this field during those active years.

The 1880 date is derived from *A Study in Scarlet*. "The Creeping Man," set in September 1903, was "one of the very last cases handled by Holmes before his retirement from practice." Two subsequent stories, "The Lion's Mane," set in 1907, and "His Last Bow," set in 1914, are clearly stated to be post-retirement. Arthur Conan Doyle's own medical career started with his 1880 voyage as ship's doctor on a Greenland whaler, and ended in 1891, when he gave up his practice of ophthalmology to become a full-time writer (except for a brief period as a doctor with an army field hospital in South Africa in 1900).

⁶ A very interesting description of the state of medicine during the years from 1870-1891 can be found in Goetz, Thomas, *The Remedy: Robert Koch, Arthur Conan Doyle and the Quest to Cure Tuberculosis* (New York: Gotham Books, 2014).

⁷ "In the year 1878 I took my degree of Doctor of Medicine of the University of London, and proceeded to Netley to go through the course prescribed for surgeons in the army." *A Study in Scarlet*.

⁸ <http://online.wsj.com/articles/book-review-the-thief-taker-hangings-by-aaron-skirboll-1409610189> Book Review: "The Thief-Taker Hangings," by Aaron Skirboll, reviewer: Jeffrey Collin. This quote is taken out of context, but it makes the point that there was no efficient regulatory system at the professional or government level, leaving it up to the legal system to develop ad hoc remedies through the mechanism of tort law.

⁹ Rodin, Alvin E. and Key, Jack D., *Medical Casebook of Arthur Conan Doyle*, (Malabar, Florida: R.E. Krieger Pub. Co., 1984).

¹⁰ "Notes from the Malpractice Trial of John H. Watson, MD," *Baker Street Journal* 33.4 (December 1983), 229-232. Unfortunately, the case appears to have been settled before the end of the trial, as no account of it can be found in the law reports. Other examples of cases in which malpractice might exist are (1) "The Creeping Man," where Watson performs emergency surgery on Professor Presbury's throat after it is torn open by his wolfhound, Roy. See Katz, Robert S., "John H. Watson, MD: The Non-Surgical Surgeon," *Baker Street Journal* 38.4 (Dec.1988): 223-225; and (2) "The Blanched Soldier," in which Mr. Kent, the surgeon who misdiagnosed Godfrey Emsworth's affliction as leprosy had "the ordinary knowledge of the educated medical man." Sir James Saunders, "the great dermatologist" diagnosed it instead as a "well-marked case of pseudo-leprosy or ichthyosis, a scale-like affection of the skin." Rodin and Key (p.225) state that "Doctor Kent...made a grievous error in diagnosing leprosy." Maurice Campbell, "Sherlock Holmes and Doctor Watson: A Medical Digression," *Guy's Hospital Gazette* Committee, 1934, p.13, writes "...one does feel inclined to blame Dr. Kent for being willing to diagnose such a serious condition as leprosy without better evidence..." Campbell also questions the diagnosis of ichthyosis, but blames Holmes, who wrote the story, for misunderstanding Dr. Saunders.

Nerve and Knowledge – Book Excerpt

It is a cold and dark afternoon late in the year 1889. Sir Hartley Clifford, QC, barrister of Gray's Inn, sits at his desk sipping tea and studying a brief that has just been brought in by his clerk. The brief, rolled up and secured by a ribbon, is from Philip Fordham, a Horsham solicitor. Fordham's client, a Mr. Victor Hatherley, a hydraulic engineer, suffered a gruesome injury in which his thumb was severed with a cleaver in a murderous attack. Bleeding and in shock, he managed to somehow drag himself back to the railway station and board a train to Paddington Station, from which he was directed by a friendly guard to the nearby office of Dr. John Watson. Watson first offered him some brandy and "sponged the wound, cleaned it, dressed it, and finally covered it over with cotton wadding and carbolized bandages." However, not content to allow his patient to rest and recover from this ghastly wound, Watson immediately packed him into a hansom cab and drove him round to meet with Mr. Sherlock Holmes. At 221B Baker Street, Hatherley was first given a hearty breakfast, then another brandy, and finally ordered to tell the story of his injury. Only a few hours later, he was dragged on another railway journey back to the scene of the crime, in the company of Holmes, Watson and Inspector Bradstreet of Scotland Yard. Now, several months after this event, and still suffering severely from his loss, Hatherley has been sent by his physician to Dr. Leslie Armstrong, one of the heads of the Cambridge Medical School¹¹ who has advised him that, in his opinion, Watson had failed to take proper care of him on the morning of his arrival in London. Treating him with brandy when a much stronger painkiller was called for, not using stitches to pull the wound together, and forcing him into strenuous activities, when he should have been resting, has resulted in significant permanent damage to his health.¹² Hatherley then consulted Fordham, who advised him that he may have a claim for damages against Watson. Fordham, in turn, consistent with practice in the British legal system then and today, "briefed" a barrister, the eminent Sir Hartley, who, after reviewing all of the evidence, advised that, in his opinion, there is a sufficient case against Dr. Watson to justify suing him for malpractice in the High Court. ...

(Continued)

To read the rest of this essay, you can order *Nerve and Knowledge* at our website:
<http://www.bakerstreetjournal.com>

About BSI Publications

The Baker Street Irregulars, the literary society dedicated to the study of Sherlock Holmes, Dr. Watson, Sir Arthur Conan Doyle, and the Victorian world, publishes *The Baker Street Journal*, the BSI Manuscript Series, the International Series, and select non-series works. All of these can be ordered at our website.

¹¹ "...he is not only one of the heads of the medical school of the University, but a thinker of European reputation in more than one branch of science." ("The Missing Three-Quarter")

¹² Failure to stitch was suggested by Van Liere, Edward J., *A Doctor Enjoys Sherlock Holmes* (New York: Vantage Press, 1959). See also Klinger, Leslie S., *The New Annotated Sherlock Holmes* (Vol.1) at p.267, note 12, and *The Sherlock Holmes Reference Library: The Adventures of Sherlock Holmes*, p. 210, note 17, for additional annotations.