

COURTROOM

or

Exam Room?

Whether they practice law, medicine, or some combination, physician-attorneys say the perspective they bring to their careers is a plus.

By Barry E. Katz

AFTER 21 YEARS OF GRUELING 12-HOUR DAYS staffing the emergency rooms at two Tennessee hospitals, Joseph Montgomery, MD, figured it was time for a change.

“Quite frankly, I hit 50 and decided that the weekend work and the 12-hour shifts were something that I could live better without,” he says.

So, four years ago, Montgomery stopped practicing medicine and began practicing law. Today, he takes doctors and other health-care providers to court, mostly in malpractice cases. His law partner is a former pharmacist.

“I have been sued for medical malpractice myself, and not many lawyers can say that,” he says.

Roughly 1,100 members of the [American College of Legal Medicine \(ACLM\)](#) have both a law degree and a medical degree. Twenty-five years

ago, just 600 physicians had degrees in both fields.

It used to be that most of the people making the legal-medical switch were disenchanted lawyers. Now, they’re more likely to be disenchanted physicians fed up with the burden of managed care and increased patient consumerism, says Fillmore Buckner, an ob/gyn-turned-lawyer and the president of the ACLM.

“It’s not fun to practice medicine anymore,” Buckner says.

Standards of care, patients’ rights, the role of insurance companies, and other health issues are being shaped more and more in courtrooms, state legislatures, and the US Congress. Many doctors feel the only way they can have a significant impact on those issues is to become part of the legal community.



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“It’s an intellectual challenge for most of us,” Buckner says. “Law makes such an impact now on the practice of medicine, it’s a logical choice. It increases your awareness of your duties of medical professionalism.”

“I think medicine gives you a feeling of being with God, where law gives you an order and a knowledge that is just wonderful,” says Anthony Repici, an Abington, Pennsylvania, osteopath who practices both law and medicine. “It gives you an orderly knowledge of life. It’s really what law is; it’s life in order.”

Job options

Some doctor-lawyers, like Repici, run combined medical-legal practices, often out of the same office. Others, like Montgomery, opt to practice law full time, specializing in malpractice cases or representing physicians before state regulators. Still others set up consulting sidelines, drawing on their legal training to help insurance companies or other

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—Joseph Montgomery, MD left medicine four years ago to escape 12-hour shifts and weekend work of staffing an emergency room. He now practices law in Tennessee.

lawyers strengthen medically related cases. A few have gone on to management posts in HMOs, hospitals, or other health agencies.

“A lot of physicians who went on to law school did it for their own benefit, in terms of understanding contracts, understanding what they were doing,” says Anthony Mastroianni, 44, a radiation oncologist at the Cleveland Clinic who went to medical school after getting his law degree in 1983. “But they don’t have any trial experience.”

At the urging of her sister, a lawyer, Houston rheumatologist Carolyn Smith,

MD, took evening classes in law to broaden her horizons.

“I’ve always enjoyed being a student,” says Smith, 50. “I like to study, I like to write, I like to sit in the classroom, I like to be around learned people, and this was just 180 degrees from what I do every day of my life. So it was sort of more out of curiosity.”

In law school, she drew laughs from her professors because she kept referring to legal clients as “patients.” She got her law degree in 1995.

Today, Smith is the chief of staff at Methodist Diagnostic Hospital in

Houston. She has become a specialist, of sorts, in risk management, working mainly within the hospital. She considered becoming a risk-management consultant but never found the time.

Law is the entry to politics for other physician-attorneys. Morriss Henry, MD, a Fayetteville, Arkansas, ophthalmologist, went to law school part time, finally getting his JD after 10 years. Along the way, he spent 18 years in the Arkansas Legislature—four years in the state House of Representatives, 14 in the state Senate.

Repici, a former member of the Pennsylvania State Licensing Board, has represented physicians before licensing boards across the country and also made an unsuccessful bid for the state Senate.

Still others enter the courtroom, not as litigators, but as expert witnesses in court cases. Of course, doctors don't need a law degree to testify in court or give depositions regarding medical matters. They're sought out as witnesses or consultants for their medical expertise, not their legal prowess. But, doctor-lawyers say, legal training can give physicians an edge in dealing with an often confusing—and sometimes intimidating—legal system.

"The thing that law school afforded me is I know now what the (legal) procedure is," says Smith, who has testified several times as an expert witness. "I know what's supposed to be done in a court of law. I know if a lawyer isn't following procedure. I know what my rights are as an expert witness. I know the types of questions the lawyer in a deposition should ask and shouldn't ask, and I know how to "play the game" a little bit better. I think I'm less intimidated now than I was."

Not an easy route to fast cash

Law school is no picnic. Like medical school, it's more than a full-time job. Many doctors attempt it while keeping their busy practices running as before,

often attending school at night.

The experience can be draining. The younger students in Smith's law classes met in study groups at different times of the day, but Smith found it difficult to join in.

"I'd have to finish my office, run to school, sit in class, run home, study, write papers, go to sleep," she says. "So there was no time for study groups.

"I had to work through lunch many times, come in early, come back to the office after class. Many times I would come back after class and make rounds if I had a

particularly busy hospital practice at the time and do more work on weekends.

"I gave up the things I usually did like sailing and family things and parties and outings. I think I even gave up vacations, which are very important to me, because I went to school year-round, including the summertime. I gave everything up. I only practiced medicine and went to school, and that was it," Smith says.

Some doctors spend years in law school, then wind up disappointed

Do Your Homework

Critical questions to research before making the move

Physicians who want to pursue law degrees could take a number of career paths that meld their medical and legal backgrounds. But whatever direction they intend to go, career counselors say, they would be wise to look before they leap.

Carol Kanarek, a New York City lawyer and counselor who advises attorneys, doctors, and other professionals pondering career changes, offers this advice:

- ✓ **Don't go to law school because you want to get away from what you're doing. You need a better reason. "Ask yourself, 'Am I doing this because I don't want to be a doctor or because I want to be a lawyer?'" Kanarek says.**
- ✓ **Visit the law school's career services office before you apply. Ask what kinds of jobs typical graduates take to get a sense of your prospects. Ask counselors for their thoughts on what you intend to do. Are your plans realistic?**
- ✓ **Talk to lawyers, preferably MD-JDs, who are already doing what you hope to do. Ask about what they do, and what they like and dislike about their jobs. You might be surprised. "The degree of unhappiness in the legal profession is enormous," Kanarek says.**
- ✓ **Be prepared to work hard for your money. Law is very entrepreneurial. You need to bring in clients to make money. Entry-level starting salaries are \$30,000 to \$40,000. Only a few of the best and brightest law students go on to the big firms that offer the big bucks.**
- ✓ **Check out the quality of the law school thoroughly. Much more so than medical school, where you study law could affect your prospects, especially if you intend to go on to a large firm.**
- ✓ **If you wind up at a large firm, be prepared psychologically to put in long, stressful hours for low pay as a junior-level lawyer, much like a medical intern.**



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when the money doesn't flow in as fast as they'd thought.

"I have not actively practiced law because, frankly, I make more money practicing medicine," says Joan Resk, DO, a Roanoke, Virginia, family practitioner who graduated from law school in 1983.

Actually, income from legal work varies enormously, depending on the type of work and the lawyers' track records. Some attorneys struggle to make a buck. Unless they've been hired by a large firm, new lawyers, on average, can expect to make \$30,000 to \$40,000 a year. But there are exceptions.

Civil cases, like malpractice suits, traditionally are taken on with the understanding that the lawyer will receive one-third of the award, plus expenses. Not bad, especially in a multi-million dollar judgment. But if the case is lost, so is the

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lawyer's income. Some cases, even the winning ones, can drag on in the courts for years, tying up the lawyer's money.

"If you lose the case, very often you're dealing with indigent clients, and there's no way to be compensated for those upfront expenses," says Robert Schneider, MD, a Westport, Connecticut, internist who graduated from law school in 1989.

"I can tell you that (expenses in) a medical malpractice case can (be) in the tens of thousands of dollars from start to finish. They very often take five years to work their way through the court system, and if they don't settle, three out of four medical malpractice cases are lost by the plaintiff. So you may spend a huge amount of time and money in losing cases.

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"You also spend a lot of time on people who call you who feel they may have a medical malpractice situation. You will spend a few hours—or more than that if you go to the next step, which is obtaining the medical records—before you decide not to accept a case. So while the large verdict and settlements certainly get a lot of attention, it is a high-risk area of law economically speaking for plaintiff's attorneys."

In his early years as a lawyer, Montgomery mostly served as a defense attorney, representing people and institutions being sued. These days, he represents plaintiffs—the folks doing the suing.

"In the field of defense medical malpractice," Montgomery says, "I was much like an ER physician because I was getting paid an hourly rate, and, quite frankly, I was making more as an ER doctor than I was as a lawyer because of overhead. In the ER, I would just go in and I was guaranteed X number of dollars.

"As a plaintiff lawyer, it's really a roller coaster. Last year's income was embarrassingly low because nothing came in, and I was borrowing money. This year's income, I think, is going to be better because a lot of cases that didn't go last year are now coming to the end of the pipeline this year, and I'm able to pay down my debt.

"Probably if you are selective in the plaintiff end of medical malpractice—if you can put up with the valleys—you're probably going to make more money in that area than you will as a defense lawyer."

Eight in 10 of Montgomery's cases are settled before they go to court.

Schneider sees the standard of living as an attorney as comparable to that of a physician. "I think that in both medicine and law, the range of income is very big, from modest to very high, probably more or less comparable. But certainly one can make a reasonable living practicing law," he says.

Even expert-witness income varies. Some doctors charge \$150 an hour. Resk

charges \$300 to \$400 and higher, depending on the case. Some insist on as much as \$4,000 up front.

"As far as economics go, it cost me [to become an attorney]," says Henry, who regularly reviews cases for plaintiffs, defendants, and insurance companies to determine whether there was malpractice. "It definitely did not make it worth my while from a monetary point of view. But from a satisfaction level, I've enjoyed it. I go to the bar meetings. I keep my (continuing legal education) hours up. I lunch with lawyers quite a bit."

Nothing's perfect

During her second year in law school, Smith testified in Texas state court as an expert for the defense in one of the early breast implant suits. The defendant, an implant manufacturer, had sought her help to prove there was no association between implants and disease. The experience was jarring, and left her jaded about the justice system.

"I went into the courtroom thinking that truth would win out, that science was important, that procedure, legal ethics, and dignified behavior on the part of all involved in the courtroom was important," Smith says. "I thought that it happened like on TV. It was so far from anything that I learned in law school that I was flabbergasted.

"There were all kinds of information being thrown around the courtroom that, in my opinion, were neither truthful nor based on scientific evidence. The behavior of the attorneys was atrocious for the most part, and other people's behavior in the courtroom was atrocious, too.

"They did not follow procedure. They were angry. They were shouting. They would intimidate me. They would ask inappropriate questions. They would tend to harass me. There was yelling back and forth. There was a lot of drama, and none of this was controlled by the sitting judge, which I thought was unusual...

"It made me feel a little bit foolish. I felt stupid that I thought there would be dignity, truth, and justice in the courtroom. Here I was a professional woman, highly educated and halfway through law school herself, and I went in the courtroom thinking that it would be professional, truthful, scientific, and dignified, and it just didn't happen.

"I felt very sad and very disappointed in the system. And from that day forward, I lost all faith in the judicial system. I've given depositions since, and I must say that I tend to hold the lawyer to a higher standard."

Legal education affects medical practice

Many attorneys say that the years in law school have affected their doctoring. Repici says his legal training has made him more careful as a physician.

"I go into the hospital, and I see so many things that people are doing, and I say we shouldn't do it this way, why don't we write it this way, it will protect us," he says.

He cites the example of doctor-patient communication regarding X-ray results. "I hear lots of times people say, 'My doctor didn't tell me,'" says Repici. "I don't know whether it's true or not, but I know when I show things to a patient, I have them sign the X-ray reports and the date. This way they can't say, 'I never knew.'"

Schneider, who recently gave up direct patient care after 30 years in the same office and now teaches medical-legal issues to interns, residents, and med students at a local hospital, says he always took a lot of time with patients and kept good records. But since becoming an attorney, he has been extra careful.

Henry, too, says his legal training has made him a better doctor. "I've never been sued," he says.

Of course, being medical doctors makes MD-JDs better lawyers, especially if they specialize in medical issues as attorneys.

"I think every personal injury case,

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whether it's an automobile accident or medical malpractice, it's a huge advantage knowing the medicine," says Schneider, who once won an award for a client of more than \$750,000.

"Most lawyers would have to spend the time to meet with a client who calls them (to decide whether) this a meritorious case that they will accept. I usually can tell over the phone. I will know the long-term complications and probabilities of a given injury. I can empathize more with the client."

He cites the legal case of a woman who had fractured her ankle and had needed a metal plate and several screws put in.

"I was actually able to look at that ankle and see here it was three months after the accident and it was still swollen," he says. "And there is some instability in the ankle, which I recognized would produce long-term disability for her. And the skin was pigmented, showing that she had a great deal of bleeding under the skin at the time of the injury," he says.

Of course, contacts in the medical community are useful to physician-attorneys, too, according to Schneider. "One of the most difficult things in medical malpractice is finding a medical expert. Not every doctor wants to testify. So one advantage is that I can reach out to physicians who may be potential experts and—doctor to doctor—talk to them about the case. (I'm able to) get past the barricade of secretaries and nurses to talk to them and explain what the case is about and possibly get them interested in rendering an expert opinion or at least looking at the records."

Familiarity with terminology, abbreviations, and even deciphering physicians' notoriously bad handwriting, are advantages MD-JDs have over their competition.

"You know the important negatives that were left out," Schneider says. "If you have somebody coming into the emergency room with chest pains, and there's no mention on the chart of (whether) the pa-

tient had shortness of breath or heavy sweating, that's an omission that is vital."

Having a medical background is just as effective on the defense side.

"The head start I have on every case is absolutely there," says Montgomery. "Almost every case that I take, I'm able to grapple with the issues on a different level than just a regular lawyer would."

Montgomery says his medical background has also made him more particular about the cases he takes. "I realize that the great majority of cases that are concerning to patients should not really be the subject of a medical malpractice action. It's the insight, perhaps, that I have as a physician. Having seen thousands of patients and thousands of bad results, I realize that most bad results and bad outcomes are not due to medical negligence that's actionable. It's due to the disease state and the unfortunate complications that come with the treatments and care that is not perfect but certainly not outside the standard of care. The true impact of my medical practice and the training that I've had is the recognition that cases of medical malpractice should not be brought unless they are fairly black and white and of significance."

A foot in both camps

Of course, in addition to being willing to be the butt of both doctor AND lawyer jokes, physicians who want to be lawyers should be prepared to be shunned by some of their medical colleagues.

"I have some of that," says Montgomery. "They're concerned about my becoming a person of the 'dark side.' There are all kinds of phraseologies describing my change in attitude, from a white-hatted protector to a black-hatted prosecutor. Yes, there are those out there who are not happy with me, and I expected it. I've developed a thick skin.

"On the other hand, there are a num-

ber of physicians who continue to be friendly, at least to a degree, and they understand that there are cases out there in the medical negligence area that need to be prosecuted. I'd like to think that they think I go about business on a higher level than the average lawyer because I'm able to cut to the chase and go to the real issues," Montgomery says.

Few doctor-lawyers regret their decision to study law. Many offer encouragement to other doctors looking for advice on whether to go to law school.

"I have a call probably every four to six months from a doctor," says Montgomery. "I tell them that it is an exciting opportunity. Certainly everybody who goes to law school doesn't have to become a trial attorney or go into medical malpractice. They can go into administration, risk management, insurance, some provider-oriented area, or they can go into defense or plaintiff med mal."

Henry's advice to other doctors is more succinct.

"It didn't make me any money," he says, "but I enjoyed it." ■

Barry Katz is government editor for the Syracuse, NY, Herald American and an adjunct professor of journalism at Syracuse University.