prepared to express an intelligent opinion on the measures when the special session of the legislative convenes next January.

"The intense feeling aroused by Governor Warren's proposed health bills in the recent sessions showed how deeply concerned the people are over anything that affects their health," Mrs. Matlock pointed out.

"Yet most of them know very little about the laws that govern our insurance and hospitalization. Our job as a federation should include a thorough study of the existing laws and proposed bills, followed by a poll of our members so that next year we can say to our representatives: 'Here is what 10,000 women want in the way of health legislation.' "

"Most of the federation members are employed women, and that means that the provisions of the social security laws are of vital importance to them," Mrs. Matlock stated.

She is asking for another committee of five women from all parts of the State to study the status of social security laws, especially as they affect women, and to report their findings to district and local clubs. . . .—Sacramento *Union*, July 22.

MEDICAL JURISPRUDENCE†

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Evidence of Malpractice

The case of *Dixon v. Norberg* (157 Pac. 2d 131), decided March 12, 1945, by the Supreme Court of Colorado, illustrates the very slight evidence which will justify submission of a malpractice case to a jury for decision, and will support a verdict against a defendant physician and surgeon.

In the *Dixon* case the undisputed testimony disclosed that the plaintiff, while eating, swallowed a small pork bone, which became lodged in her throat, and caused such distress that she visited the defendant physician's office immediately, with her husband, for treatment.

There the defendant, after making two unsuccessful attempts to remove the bone by means of an instrument carrying a piece of surgical cotton on it, told plaintiff that he could do nothing more for her and that she should consult a specialist. He then called another physician, who instructed him to take x-rays, which he did, and then sent plaintiff to the specialist. This physician, by means of an esophagoscope, removed the bone. He first located some cotton on the left side of the esophagal wall. This cotton was on the pork bone, and when the cotton was removed the bone came with it. Subsequent examination disclosed a tear in the esophagal wall. No damage was occasioned by use of the esophagoscope itself.

As a result of the tear in the esophogus plaintiff became seriously ill and brought this action against the defendant for malpractice, alleging that he had treated her negligently in attempting to remove the bone, thus injuring the esophagal wall.

Defendant testified that when plaintiff consulted him he detected a foreign body in her throat, and, by means of a laryngeal forceps with a piece of surgical cotton on the end, he tried to wipe this foreign body from the throat with a sweeping motion from below upward. Being unsuccessful, he called the specialist, who was ultimately successful in removing the bone. The defendant stated positively that he did not insert the forceps down the esophagus of the plaintiff to the point where the specialist testified the pork bone was located, and that it would have been physically impossible to have done so.

Another physician, called by defendant as a witness, testified that the method used by defendant was approved in the general practice of medicine in the community.

Plaintiff testified that the defendant did put the forceps down her throat, and that she felt a sharp pain, and that immediately afterwards there was some hemorrhage.

There was medical testimony to the effect that the cotton might have been swallowed by plaintiff in the operations heretofore discussed, and in its journey down the esophagus, have come in contact with the bone and adhered thereto. It was also testified that the adherence of the cotton to the bone was so firm that the impact between the bone and the cotton must have been with more force than that involved in the act of swallowing. Although defendant testified that plaintiff complained of the foreign body being in the upper reaches of her throat, the specialist testified that when defendant telephoned him he had stated that the patient in the office had a bone in her esophagus.

Other medical specialists called by plaintiff, contrary to the testimony of defendant's witness, stated that the manner in which defendant probed for the bone in the esophagus was not good practice considering "the present standards in the profession for a general practitioner."

The jury rendered a verdict for the plaintiff in the sum of $7000.00.

On appeal the principal question presented to the court was whether there was sufficient competent evidence in plaintiff's favor to warrant submission of the case to the jury. The court held that here there was a conflict in the testimony which warranted its submission to the jury, and the evidence in plaintiff's favor was sufficient to justify the verdict rendered.

The court approved the following instruction given to the jury by the trial court:

"You are instructed that in judging the proper degree of skill to be exercised by a physician or surgeon in any given case, regard is to be had to the advanced state of the profession at that time, and that a physician or surgeon by holding himself out to the world as such impliedly contracts that he possesses the reasonable degree of skill, learning and experience which good physicians and surgeons of ordinary ability and skill, practicing in similar localities, ordinarily possess, and that he will use his skill with ordinary care and diligence according to the circumstances of the case, and if you find that the defendant in this case did not use ordinary care and diligence then you will find for the plaintiff."

The Supreme Court, therefore, considered the testimony offered on behalf of plaintiff sufficient to establish a departure from the standard of care or degree of skill which justified a verdict against the defendant for malpractice.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions, and analyses of legal points and procedures of interest to the profession.

LETTERS†

Concerning C. and W. M. article on "Black Widow Spider":

(COPY)

SIMMONS-BOARDMAN PUBLISHING CORPORATION
Chicago, Ill., 14 July 1945.

To the Editor: I am writing to you at the suggestion of the American Medical Association to ask if I may quote two or three paragraphs from an article which appeared in the November, 1935, issue of CALIFORNIA AND WESTERN MEDICINE.

The article in question deals with the Black Widow spider (Lactrodectus mactans), and was written by Dr. Russell M. Gray of Indio, California.

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.