order to establish the diagnosis. If these studies confirm that the patient is suffering from a dystrophic process, the prognosis is likely to be different; and the mode of inheritance will differ from that typically seen in boys suffering from the Duchenne variety of the disease. This conclusion has important implications with respect to genetic counselling and the advice to be given to parents.

Patients, Doctors, and Wills

One of the reforms introduced by the Administration of Justice Act 1969 was that a patient who is medically unfit to make a will may have one made on his behalf by the Court of Protection. In the past the Court (strictly speaking, not a court at all but an office of the Supreme Court charged with the management of the property of those under a disability) was able to direct a settlement of a patient's property but could go no further.

Before a statutory will is made the patient must be shown to lack "testamentary capacity." The meaning of these two words of legal shorthand is explained by the Master of the Court of Protection himself at page 801. In a nutshell, as Sir Raymond says, it means that the testator must be possessed of a "sound disposing mind." As he acknowledges it is one thing to put meanings in a nutshell and quite another to keep them there: lawyers who are given all too readily to cramming the contents of portmanteaux into nutshells have found over the years that the best exposition of the law was that given by Lord Chief Justice Cockburn exactly a century ago:

"It is essential that the testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affection, prevent his sense of right or prevent the exercise of his natural faculties."[1]

Those three elements are the ones to which Sir Raymond refers in his article, and it is vitally important that doctors should realize the far-reaching extent of their duty when they are called upon to advise on testamentary capacity. Not only must they ensure that the testator understands the consequences of making a will but they must also see that he is conscious of the scope of his assets and the claims (albeit moral ones) which others have on him. To perform such a task properly the doctor may have to probe at length the details of the patient's affairs. Furthermore, just as insanity voids the making of a will so it voids the revoking of one, too; and on the patient's return to sanity it is the doctor's duty as much as the lawyer's to inform him of how his affairs were managed during his insanity, so that he may ratify or revoke such management.

Sir Raymond ends with a warning note. Too often in the past, he says, doctors have lightheartedly witnessed wills where the testator lacked capacity. Since judges often take a doctor's attestation of a will as his vouching for the testator's capacity, this is a serious matter.

Doctors should also be warned of the dangers they run if a patient in his declining days indicates an intention to leave them a legacy. In such circumstances the doctor is in a fiduciary position to the patient, and to avoid any suspicion of influence a colleague who is not a beneficiary under the will should be called in at once. Though they are fortunately rare, it is hard to imagine a more unpleasant action brought against a medical practitioner in the civil courts than one where allegations of undue influence are made. In any case where doctors are doubtful of a patient's capacity they should advise the relatives to see a solicitor or, failing that, themselves report the circumstances to the Court of Protection in London.[2]

[1] Banks v. Goodfellow, L. K. 5 Q.B. at page 565.
[2] *British Medical Journal*, 1968, **3**, 384

New Situation

While doctors last week were filling in their referendum forms on whether they were prepared to resign from the N.H.S. if the Government would not assure the continued existence of the independent Review Body, the people, in a general election on 18 June, changed the Government. Thus the decision on the future of the Review Body now rests with a different administration, under Mr. Edward Heath, and a different Secretary of State for Social Services, Sir Keith Joseph, and from Tory statements during the election campaign there is reason to hope that the medical profession's demands for the continuance of the review body system will be met. A Conservative Government set up the Pilkington commission in 1957, and it was a Conservative Government in 1960 which insisted on a package-deal acceptance of the commission's monetary award and its recommendations for reviewing doctors' and dentists' pay.

Since there is a Special Representative Meeting on 27 June at Harrogate to consider the result of the referendum, it is to be expected that the Government will announce before then its intentions about the review body system. It is to be hoped that it will be unequivocal about the Review Body's independence. Otherwise neither Lord Kindersley and his colleagues, who have just resigned, nor any other group of eminent men could be expected to offer their services. The profession and a re-established Review Body would also wish to be reassured that the system could function in the terms defined by the Royal Commission (or, if under new terms, those acceptable to all sides), which would exclude reference of an award to any other tribunal.

The results of the referendum were not available when this journal went to press, but if a majority was in favour of resignation it could be only from a strong belief in the rightness of the cause. A majority not in favour of resignation could indicate the extreme reluctance of doctors to take such a step, however much the patients' interests seemed to be safeguarded. But if the Government gives the necessary reassurances about the Review Body the Special Representative Meeting should be able quickly to dispose of the resignation question. It will also have to consider whether to call off the sanctions already in operation. The refusal of doctors to give certificates of incapacity must be a severe impediment to the administrative machine, and the effects of withdrawal from co-operation in administering the N.H.S. will be cumulatively damaging. Sanctions have made their point—perhaps even more strongly than was expected—and they can be applied again if necessary.

Much will depend on what the Government has to say before 27 June, not only on the Review Body but also on whether there are any compelling reasons why the recent award of 30% cannot be accepted, but it is to be hoped that there will be a chance to wipe the slate clean and to start again. The relationship between the profession and the State will always be a delicate one, whatever Government is in power, and it is in the interests of all that it should be as secure and as productive as possible.