

# Doctors in Attic Forensic Oratory

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**I**N DEMOSTHENES 54 *Against Conon*, the speaker Ariston contrasts his opponents' witnesses, whom he characterises as co-conspirators prepared to tell a variety of lies on his enemies' behalf, with his own witnesses, who are doctors (35–36):

καὶ ταῦτα τὰ λαμπρὰ καὶ νεανικά ἐστὶν αὐτῶν “οὐ γὰρ ἡμεῖς μαρτυρήσομεν ἀλλήλοις; οὐ γὰρ ταῦθ' ἐταίρων ἐστὶ καὶ φίλων; τί δὲ καὶ δεινόν ἐστὶν ὧν παρέξεται κατὰ σοῦ; τυπτόμενόν φασί τινες ὄραν; ἡμεῖς δὲ μηδ' ἠφθαι τὸ παράπαν μαρτυρήσομεν. ἐκδεδύσθαι θοιμάτιον; τοῦτ' ἐκείνους προτέρους πεποικέναι ἡμεῖς μαρτυρήσομεν. τὸ χεῖλος ἐρράφθαι; τὴν κεφαλὴν δέ γ' ἡμεῖς ἢ ἕτερόν τι κατεαγένας φήσομεν.” ἀλλὰ καὶ μάρτυρας ἰατροῦς παρέχομαι. τοῦτ' οὐκ ἔστιν, ὦ ἄνδρες δικασταί, παρὰ τοῦτοις ὅσα γὰρ μὴ δι' αὐτῶν, οὐδενὸς μάρτυρος καθ' ἡμῶν εὐπορήσουσιν.

And these are their brilliant and spirited attitudes: “For shall we not bear witness for each other? Is that not the way of companions and friends? And so what is fearful about the charges he has brought against you? Some people say they saw him being beaten? We will testify that he wasn't touched at all. That his cloak was ripped off? We will testify that they did it to you first. That his lip has been stitched up? We will say that your head or some other part was broken.” But I also bring doctors as witnesses. This is not, men of the jury, the case with them; for apart from as much as comes from themselves, they will not supply a single witness against me.

In this passage a dichotomy of untrustworthy and trustworthy testimony is clearly established, even though Ariston provides no additional characterisation of his witnesses beyond their profession. Why is a doctor a particularly credible witness? The statement suggests automatic trust in these doctors—perhaps due to their professional reputation and expertise, or their lack

of personal relationship with the speaker—but there is clearly an additional rhetorical element in play. Demosthenes actively draws attention to the profession, knowing that it will have a certain persuasive effect on the *dikasts*.

Although Demosthenes allows for no ambiguity in his positive view of doctors in this instance, the same cannot be said for every doctor that appears in forensic rhetoric. Here, I survey the appearances of doctors in Attic forensic oratory with a view both to providing a clearer reading of the rhetorical operation of this passage, and to elucidating the perceptions and forensic uses of doctors in Athenian courts. I begin with a brief examination of perceptions of doctors outside of the courts, before addressing in turn passages that present figurative doctors, reputable and disreputable doctors who appear in courtroom narratives, and doctors brought forth as witnesses during the trial, including those in Demosthenes 54.

*Perceptions of doctors in fourth-century Athens*

There were, of course, a variety of types of medical practitioners in fourth-century Greece. Itinerant doctors would likely have had to rebuild their reputation in every new town they visited, unless they were particularly famous.<sup>1</sup> Many cities including Athens probably also had ‘public’ doctors, though the precise nature of their role is unclear.<sup>2</sup> Doctors were unlikely to come from an elite background, and this was particularly true of the fourth century in Athens, when the salary for a public doctor was still relatively modest.<sup>3</sup> The idea is asserted in Plato’s *Gorgias* (445B) that doctors should be seen as equivalent to skilled crafts-

<sup>1</sup> L. Edelstein, *Ancient Medicine* (Baltimore 1967) 87–91; G. E. R. Lloyd, *Early Greek Science: Thales to Aristotle* (London 1970) 52.

<sup>2</sup> Lloyd, *Early Greek Science* 51–52.

<sup>3</sup> V. Nutton, *Ancient Medicine* (London 2004) 259. Ar. *Plut.* 408 may refer to public doctors and indicate that in the fourth century Athens could no longer afford to support many of them: τίς δῆτ’ ἰατρός ἐστί νῦν ἐν τῇ πόλει; οὔτε γὰρ ὁ μισθὸς οὐδὲν ἔσται οὔθ’ ἡ τέχνη, “What doctor is there in the city now? Where there’s no pay, there’s no craft.” However, this may simply refer to doctors in general.

men.<sup>4</sup> At Athens, many doctors would be foreigners, and would therefore have a naturally lower status than Athenian citizens.<sup>5</sup> A few doctors may have made enough money to become rich, though this became more common in the Hellenistic period; otherwise, the majority of physicians would have earned enough money to live on, as would most working people.

The Hippocratic *Oath* suggests that at least some doctors operated under a code of ethics, but the question which doctors actually took the oath remains unanswered. It has recently been suggested that the ethical section of the oath may not in fact be as old as the first section;<sup>6</sup> indeed, the ethics espoused in it are at odds with other evidence, and as Lloyd and Sivin note, “plenty of evidence shows doctors, both Hippocratic writers and others, breaking both the spirit and the letter of the injunctions [the oath] contains and getting away with it.”<sup>7</sup> The phrasing of the oath’s exhortation not to do harm, which also appears in the *Epidemics*, makes it clear that the Hippocratic writers were aware of the danger that incorrect medical treatments could pose to patients.<sup>8</sup> Doctors who failed to treat a patient successfully could easily be represented as incompetent, as seen in Antiphon’s third *Tetralogy* (e.g. 2.4), and doctors may have refused to treat patients if they were not sure they could help them, in order to avoid getting a reputation for being ineffective.<sup>9</sup> The tract *On Ancient*

<sup>4</sup> See H. W. Pleket, “The Social Status of Physicians in the Greco-Roman World,” *Clio medica* 27 (1995) 27–34; Edelstein, *Ancient Medicine* 87.

<sup>5</sup> Edelstein, *Ancient Medicine* 87 n.2.

<sup>6</sup> C. Tolsa, “On the Origins of the Hippocratic *Oath*,” *GRBS* 59 (2019) 614–638.

<sup>7</sup> G. Lloyd and N. Sivin, *The Way and the Word: Science and Medicine in Early China and Greece* (New Haven 2002) 112.

<sup>8</sup> P. J. ver der Eijk, *Medicine and Philosophy in Classical Antiquity: Doctors and Philosophers on Nature, Soul, Health and Disease* (Cambridge 2005) 101.

<sup>9</sup> Edelstein, *Ancient Medicine* 96–97; P. Pioreschi, “Did the Hippocratic Physician Treat Hopeless Cases?” *Gesnerus* 49 (1992) 341–349. Note, however, that doctors would also not necessarily have denied patients palliative care: see H. von Staden, “Incurability and Hopelessness: The Hippocratic

*Medicine* makes it explicit that not all doctors had the same level of skill and knowledge, and that some were simply better at their jobs than others (Hippoc. *VM* 1.11–19).

Given their training, however, it is likely that many doctors would have been respected individually in their communities as skilled practitioners, so long as the care and the treatments they provided were generally successful, or at least appeared to be thorough.<sup>10</sup> It is certain that reputable practitioners did have training and knowledge beyond that of the average person. Eryximachus in Plato's *Symposium* clearly speaks from a position of learned knowledge and 'scientific' expertise.<sup>11</sup> The Hippocratic writers saw their work as a *technē*, implying learned knowledge and skill. Plato includes medicine as one of the *technai* in the *Gorgias*, and speaks highly of its value.<sup>12</sup> Indeed, Plato's generally quite positive characterisation of medicine and its practitioners could be taken as representative of their status and reception in fourth-century Athens. Several points, however, should be noted in this regard. First, the content of the Hippocratic *On the Art*, a defence against detractors of the medical profession, makes it clear that such detractors did exist, and that doctors were at pains to justify the necessity and quality of their work (*De arte* 1.21–25).<sup>13</sup> Second, the evidence in the Hippocratic texts of people pretending to be doctors (e.g. *Decent.* 2–3, *Lex* 1)

Corpus," in P. Potter (ed.), *La maladie et les maladies dans la collection hippocratique* (Quebec 1990) 75–112.

<sup>10</sup> See e.g. Pl. *Grg.* 514D–E, which suggests that it would be ridiculous to attempt to work successfully as a doctor without an adequate track-record of good results.

<sup>11</sup> On the scientific and philosophical wisdom of Eryximachus' speech see G. A. Scott and W. A. Welton, *Erotic Wisdom: Philosophy and Intermediacy in Plato's Symposium* (Albany 2008) 56–63.

<sup>12</sup> Plato does not, however, rate medicine quite so highly as those *technai* that deal with the preservation and improvement of the soul, or even as highly as gymnastics, as he seems to prioritise maintaining the body over restoring it; see S. B. Levin, *Plato's Rivalry with Medicine: A Struggle and its Dissolution* (Oxford 2014) 20.

<sup>13</sup> See E. D. Phillips, *Aspects of Greek Medicine* (London/Sydney 1973) 39–40.

is echoed in Plato, for example in the *Charmides*, which suggests that there were at the very least unscrupulous people masquerading as doctors (though Plato would not characterise them as ‘true doctors’: *Chrm.* 170E). Third, as Levin notes, Plato’s positive presentation of physicians is “a normative claim about the enterprise at its best, not a descriptive one about how all doctors already function.”<sup>14</sup> Competent doctors, then, could expect to garner respect from their patients, and doctors as a category may have been generally perceived as trustworthy, though it is clear that opinions of individual practitioners could deviate from this if they did not do their work well.

### *Figurative doctors*

The archetypal nature of doctors means that they appear with some regularity in figures of speech in the Attic orators. In several instances, we find figurative doctors portrayed in a positive light and equated to figures with various civic duties. In Isocrates 8.40, a comparison is drawn between doctors and speakers who give necessary but perhaps unpleasant advice:

καταγέλαστόν ἐστὶ τὰς μὲν καύσεις καὶ τὰς τομὰς τῶν ἰατρῶν ὑπομένειν, ἵνα πλειόνων ἀλγηδόνων ἀπαλλαγῶμεν, τοὺς δὲ λόγους ἀποδοκιμάζειν πρὶν εἰδέναι σαφῶς εἰ τοιαύτην ἔχουσι τὴν δύναμιν ὥστ’ ὠφεληῆσαι τοὺς ἀκούοντας.

It is ridiculous to submit to the burns and cuts of the doctor, in order that we may be released from greater pains, but to reject speeches before knowing clearly if they have the power to help those who hear them.

In this analogy, those who heal the body are equated to those who ‘heal’ the city; although both processes may be painful, the results will be beneficial. This suggests a view of doctors who know what is best for their patients, even if it may seem unpleasant at the time, and therefore characterises them as skilled and compassionate professionals. Such a figurative construction also suggests trust in the doctor who has such specialist knowledge, and by extension trust in the politician who also, through experience, knows what is good for the city and has its best

<sup>14</sup> Levin, *Plato’s Rivalry* 18 n.39.

interests at heart. Surgery is depicted as the doctor's method of healing: by comparison, the good politician's methods may also appear invasive and extreme in order to improve the city's situation. The suggestion that people readily submit to the doctor but not to the politician paints a picture of a professional who is automatically trusted to be doing the right thing—unlike the rhetor, perhaps.

Another doctor who employs surgical techniques appears in a simile at Demosthenes 25.95, in this case equated not to the speaker but to the jury in the present court case:

δεῖ δὴ πάντας, ὥσπερ οἱ ἰατροί, ὅταν καρκίνον ἢ φαγέδαιναν ἢ τῶν ἀνιάτων τι κακῶν ἴδωσιν, ἀπέκαυσαν ἢ ὄλωσ ἀπέκοψαν, οὕτω τοῦτο τὸ θηρίον ὑμᾶς ἐξορίσαι, ῥῖψαι ἐκ τῆς πόλεως, ἀνελεῖν, μὴ περιμεῖναντάς τι παθεῖν, ὃ μήτ' ἰδίᾳ μήτε δημοσίᾳ γένοιτο, ἀλλὰ προευλαβηθέντας.

Indeed it is necessary that, just as doctors, whenever they find a cancer or tumour or some incurable ill, burn or cut it away completely, so you all should banish this beast from you, cast him from the city, do away with him; do not wait for something to happen, which may befall individuals or the people, but take precautions.

The doctor and the jury are presented as protective forces removing an evil from the body or the city, which is at risk of destruction in both cases. Here, the visceral nature of surgery reflects the ruthlessness and permanence with which the perpetrator of crime should be removed from the city. The deliberative nature of the court, when equated with the medical profession, suggests that both doctors and dikasts are expected to draw on knowledge and experience in order to make such a 'life-saving' decision. In Demosthenes 26.26, the doctor's ability to diagnose and heal the body is contrasted with that of the legislator to do the same for the *psychē* by making criminal acts, which presumably are implied here to reflect a diseased mind, illegal.<sup>15</sup> Once again, both the doctor and the legislator have

<sup>15</sup> τὰ μὲν γὰρ ἐν τοῖς σώμασιν ἀρρωστήματα τοῖς τῶν ἰατρῶν εὐρήμασι καταπάυεται, τὰς δ' ἐν ταῖς ψυχαῖς ἀγριότητας αἰ τῶν νομοθετῶν ἐξορίζουσι διάνοιαι, "For the sicknesses of the body are ended by the discoveries of the

specialist knowledge, and both have the best interests of their ‘patient’ at heart. In Demosthenes 18.243, too, a doctor is employed as a simile for the orator working to save the city; in this instance, the idea of a doctor withholding the method of treatment until after the patient has died is presented as equally ridiculous as the orator failing to inform the people of the best course until after a calamity has struck.<sup>16</sup> In this case, the doctor and the rhetor are expected to have a preventative role in the face of mortal danger.

Thus all of our figurative doctors in the forensic speeches are presented as having specialist knowledge and using it to heal their patients and save them from death; the idea of them not doing so appears absurd. This is not especially surprising: as an archetype, we might expect to see doctors presented as wanting the best for their patients and using their expertise to achieve it. It is useful, though, to compare two other sources, not examples of forensic oratory but related to the genre, that expand this metaphorical view of doctors.<sup>17</sup> First, in the *Third Olynthiac* (33), Demosthenes compares the non-committal actions of the *dēmos* to the diet prescribed by doctors which neither restores the

doctors, but savagery in the soul is banished by the intentions of the legislators.”

<sup>16</sup> ὡσπερ ἂν εἴ τις ἰατρὸς ἀσθενούσῃ μὲν τοῖς κάμνουσιν εἰσιὼν μὴ λέγοι μηδὲ δεικνύοι δι’ ὧν ἀποφεύζονται τὴν νόσον, ἐπειδὴ δὲ τελευτήσῃ τις αὐτῶν καὶ τὰ νομιζόμεν’ αὐτῷ φέροιτο, ἀκολουθῶν ἐπὶ τὸ μνήμα διεξίει “εἰ τὸ καὶ τὸ ἐποίησεν ἄνθρωπος οὐτοσί, οὐκ ἂν ἀπέθανεν.” ἐμβρόντητε, εἴτα νῦν λέγεις, “It is as if a doctor going about his work with the sick should neither speak nor show how to be rid of the illness, but when they have died and the customs have been observed, he should follow along to the tomb expounding ‘if the man had done this and that, he would not have died’. What insanity, to talk now!”

<sup>17</sup> More general medical language is also employed in the deliberative speeches; on this see C. W. Wooten, “Unnoticed Medical Language in Demosthenes,” *Hermes* 107 (1979) 157–60; A. E. Das, “Health, Harm, and the Civic Body: Medical Language in the Speeches of Demosthenes,” *GRBS* 59 (2019) 340–367.

patient's strength nor allows him to die.<sup>18</sup> At first glance this suggests an unscrupulous doctor, perhaps extending the length of his patient's suffering in order to receive more pay. But in light of the analogy with the *dēmos*, the comparison in fact implies a more apathetic figure, who cannot or will not commit to either course of action. Either way, this figurative doctor appears to be an unreliable figure, rather different from the doctors used in analogies in the courts.

Second, we can consider the doctor in Antiphon's hypothetical third *Tetralogy*. The speakers debate whether the victim died at the hands of his alleged violent attacker, or of the doctor under whose care he was placed. At Antiphon 4.2.4 the defendants cast doubt on the competence of the doctor: the patient has died, they argue, not as the result of the wounds the defendant inflicted, but because the doctor carried out an unsuccessful course of treatment which he was advised by other doctors would endanger the patient's life.<sup>19</sup> The scenario is hypothetical and highly rhetorical, and Antiphon has his defendant go into exile voluntarily after his first speech, suggesting that his case may be rather weak. Nevertheless, we are left with the suggestion that incompetent as well as competent doctors could have a role to play in a court case, and that opinions could

<sup>18</sup> τῶν τοιούτων λημμάτων ἀπαλλαγήητε, ἃ τοῖς ἀσθενοῦσι παρὰ τῶν ἰατρῶν σιτίσις διδομένοις ἔοικε. καὶ γὰρ ἐκεῖν' οὐτ' ἰσχὺν ἐντίθησιν οὐτ' ἀποθνήσκειν ἐξ· καὶ ταῦθ' ἃ νέμεσθε νῦν ὑμεῖς, οὔτε τοσαῦτ' ἐστὶν ὡστ' ὠφέλειαν ἔχειν τινὰ διαρκῆ, οὐτ' ἀπογόντας ἄλλο τι πράττειν ἐξ, "you may be delivered of these profits, which are like the diet given to the sick by the doctors. For they neither put strength into the patient nor allow him to die; and these [profits] that you now deal out neither are so great as to be sufficient to help you, nor allow you to give them up and try something else."

<sup>19</sup> νῦν δὲ πολλῶν ἡμέραις ὕστερον μοχθηρῶ ἰατρῶ ἐπιτρεφθεὶς διὰ τὴν τοῦ ἰατροῦ μοχθηρίαν καὶ οὐ διὰ τὰς πληγὰς ἀπέθανε. προλεγόντων γὰρ αὐτῶ τῶν ἄλλων ἰατρῶν, εἰ ταύτην τὴν θεραπείαν θεραπεύσειτο, ὅτι ἰάσιμος ὢν διαφθαρήσειτο, "but as it is, a few days later, having been entrusted to an inferior doctor, he died due to the doctor's incompetence, and not due to the blows. For other doctors informed this doctor beforehand that, if he followed this course of treatment, despite being curable, the [patient] would die."



differ between medical practitioners to the extent that patients might live or die as a result.

*Reputable doctors*

In Demosthenes 47, the speaker accuses the defendants of having badly beaten an old freedwoman of his household in an attempt to steal his property; the woman later died of her wounds. Before she died, the speaker says that he demanded that the men provide a doctor to care for the woman, but that when they would not do so, he had to bring in a doctor himself (47.67):

ἐγὼ αὐτὸς εἰσήγαγον ἰατρὸν ᾧ πολλὰ ἔτη ἐχρώμην, ὃς ἐθεράπευεν αὐτὴν ἀρρωστοῦσαν, καὶ ἐπέδειξα ὡς εἶχεν, εἰσαγαγὼν μάρτυρας. ἀκούσας δὲ τοῦ ἰατροῦ ὅτι οὐδὲν ἔτι εἶη ἡ ἄνθρωπος, πάλιν ἑτέρους μάρτυρας παραλαβὼν τὴν τε ἄνθρωπον ἐπέδειξα ὡς εἶχεν, καὶ ἐπήγγειλα τούτοις θεραπεύειν.

I myself brought in a doctor, whom I had consulted regularly for many years, and he cared for her while she was unwell, and I showed him the state she was in, and brought witnesses. And when I heard from the doctor that the woman did not have long to live, again I took other witnesses, showed them the state the woman was in, and called on these men to care for her.

Like the doctor in Demosthenes 54, this doctor is able to give the prognosis that his patient is likely to die. What is of particular interest in this passage is the relationship between the doctor and the multiple witnesses called in by the speaker. The doctor is brought in to care for the woman, and presumably makes the pronouncement that she will shortly die on the basis of his professional knowledge. But the speaker also summons additional witnesses, both when the doctor is initially brought in, and when he makes the final prognosis; we must assume that at the start the speaker was already preparing to take legal action against his opponents, and that he called in these extra witnesses in anticipation of their later being able to appear in court to support his case. It seems that there was a perceived benefit to bolstering the word of the doctor with that of other men to prepare for the potential necessity of evidence in future legal proceedings. Indeed, this description is immediately followed by the testimony of witnesses, though it is interesting to note that it is not specified

whether the doctor himself was included. Although it might appear that his inclusion as a witness would have bolstered the speaker's case, presumably testifying to a person's death did not require the same level of medical expertise as testifying to how close a person came to dying, as in Demosthenes 54.

Another reputable doctor is the one in [Dem.] 40, who is allegedly asked to act unscrupulously in his role as a medical professional, but rejects and exposes the plot. The speaker Mantitheus' opponent and half-brother, Boeotus (also known as Mantitheus, the dispute about the name being the subject of the case in Dem. 39), allegedly concocted a false charge of *trauma*, wounding, against Mantitheus and brought him to trial before the Areopagus. The full charge must have been *dikē traumatos ek pronoias*, an indictment for wounding "with premeditation," the only type of wounding charge tried by the Areopagus. The precise meaning of "premeditation" in this instance is unclear, but bringing the charge at the ancestral court for homicide suggests that it may imply, if not actual attempted homicide, at least severe wounding that had the potential to kill.<sup>20</sup> If so, this is exactly the kind of case that may have benefited from the opinion of someone with medical expertise, though there is no sign of a doctor in our only extant speeches from trials for *trauma*, Lysias 3 and 4.

In order to carry out his plot, Mantitheus says, Boeotus made a cut on his own head and passed it off as a wound inflicted by Mantitheus. A doctor whom he had tried to bring into the plot went to the Areopagus and revealed everything (40.33):

καὶ εἰ μὴ Εὐθύδικος ὁ ἰατρός, πρὸς ὃν οὗτοι τὸ πρῶτον ἦλθον δεόμενοι ἐπιτεμεῖν τὴν κεφαλὴν αὐτοῦ, πρὸς τὴν ἐξ Ἀρείου πάγου βουλὴν εἶπεν τὴν ἀλήθειαν πᾶσαν, τοιαύτην ἂν δίκην οὗτος εἰλήφει παρ' ἐμοῦ τοῦ μηδὲν ἀδικοῦντος, ἦν ὑμεῖς οὐδὲ κατὰ τῶν τὰ μέγιστ' ἀδικοῦντων ὑμᾶς ἐπιχειρήσαιτ' ἂν ποιήσασθαι.

And if Euthydicus the doctor, to whom these men went at first to ask him to cut [Boeotus'] head, had not told the Areopagus council the whole truth, this man would have taken such vengeance on

<sup>20</sup> C. Carey, *Lysias: Selected Speeches* (Cambridge 1989) 109.

me, who had done him no injustice, as you would not carry out against those who had inflicted the greatest of injustices on you.

In the case of a successful conviction for *trauma*, Mantitheus may have been liable to so severe a penalty as exile, as he notes at 40.32; thus, he implies, the doctor's statement saved him from a terrible fate. Euthydicus not only rejected being part of the plot, but was willing to expose the wrongdoing of the plotters. The statement that the doctor delivered his information to the Areopagus council suggests that it was probably delivered in the form of witness testimony during the false prosecution, rather than during a pre-trial stage, which would not have involved the whole council.<sup>21</sup> It is worth noting that the doctor's testimony would not have required his professional expertise: he does not testify to medical matters, but to the fact that he was allegedly asked to make the cut by Boeotus and his co-conspirators.<sup>22</sup> In giving the testimony, though, he may have sought to protect his professional reputation. Either way, he is clearly presented in the rhetoric as an upstanding and honest character, and a foil to the plotters seeking unfairly to convict Mantitheus. The incident also suggests that he would have had the necessary knowledge to make a cut on someone's head that was presumably intended to look impressive while causing no serious damage.

### *Disreputable doctors*

If Euthydicus was able successfully to defend his reputation in 347, it did not remain untarnished for long.<sup>23</sup> In Aeschines

<sup>21</sup> D. M. MacDowell, *Demosthenes the Orator* (Oxford 2009) 78. There is no indication in the text that the doctor also appeared as a witness in the present trial.

<sup>22</sup> *Contra* Hall's implication that the doctor here is a 'medical expert' called to testify to the state of the litigant's wounds: E. Hall, "Lawcourt Dramas: The Power of Performance in Greek Forensic Oratory," *BICS* 40 (1995) 39–58, at 53.

<sup>23</sup> On the date of [Dem.] 40 see C. Carey and R. A. Reid, *Demosthenes: Selected Private Speeches* (Cambridge 1985) 160.

*Against Timarchus*, delivered in 346/5,<sup>24</sup> Euthydicus reappears as the owner of a house in Piraeus where Timarchus stayed as a young man, and in which he allegedly set up trade as a prostitute while pretending to be a student of the doctor's (Aeschin. 1.40).<sup>25</sup> No explicitly negative language is applied to the doctor in this instance, and it is not immediately clear from Aeschines' narrative whether Euthydicus was aware of or involved in Timarchus' alleged activities. The doctor himself does not appear as a witness, though another witness is brought forth who seemingly testified to having a relationship with Timarchus while Timarchus was living with Euthydicus. Mentioning the doctor's house as the location of illicit activity, however, would surely have cast the doctor in a negative light, and, if Euthydicus was aware of Timarchus' activities, even implicitly placed him in the category of pimp or brothel keeper; at the very least, it might be inferred that the doctor condoned Timarchus' activities and perhaps purchased his services.<sup>26</sup> Later in the speech (124) Aeschines justifies calling those locations where Timarchus lived brothels by the analogy that "if a doctor moves into one of the shops on a street, it is called a surgery."<sup>27</sup> This could be passed off as purely

<sup>24</sup> On the date of Aeschin. 1 see C. Carey, *Aeschines* (Austin 2000) 19.

<sup>25</sup> οὗτος γὰρ πάντων μὲν πρῶτον, ἐπειδὴ ἀπηλλάγη ἐκ παίδων, ἐκάθητο ἐν Πειραιεὶ ἐπὶ τοῦ Εὐθυδικίου ἰατροῦ, προφάσει μὲν τῆς τέχνης μαθητῆς, τῇ δ' ἀληθείᾳ πωλεῖν αὐτὸν προηρημένος, ὡς αὐτὸ τοῦργον ἔδειξεν, "For this man, first of all, when he was rid of his youth, set up in Piraeus at the house of Euthydicus the doctor, ostensibly as a student of the craft, but in truth choosing deliberately to sell himself, as the event showed." On the identification of Euthydicus see N. Fisher, *Aeschines Against Timarchos* (Oxford 2001) 169.

<sup>26</sup> Fisher, *Aeschines Against Timarchos* 169, is explicit about the negative implications for the doctor: "Aeschines ... allows the clear implication that [Euthydicus] was happy to let Timarchos act as a prostitute in his house/surgery, had wide contacts, and presumably was in fact acting as pimp as well as lover."

<sup>27</sup> ἐὰν δ' εἰς ἓν δῆπου τούτων τῶν ἐπὶ ταῖς ὁδοῖς ἐργαστηρίων ἰατρὸς εἰσοικίσηται, ἰατροῦ καλεῖται· ἐὰν δ' μὲν ἐξοικίσηται, εἰς δὲ τὸ αὐτὸ τοῦτο ἐργαστήριον χαλκεὺς εἰσοικίσηται, χαλκεῖον ἐκλήθη, ἐὰν δὲ κναφεύς, κναφεῖον, ἐὰν δὲ τέκτων, τεκτονεῖον· ἐὰν δὲ πορνοβοσκὸς καὶ πόρνη, ἀπὸ τῆς ἐργασίας αὐτῆς ἐκλήθη πορνεῖον, "If it happens that a doctor establishes

figurative language, intended to set up an effective rhetorical dichotomy between a reputable and a disreputable person and location, though it is surely no accident that one of Timarchus' 'brothels' was indeed a doctor's surgery. Although the house of Euthydicus is not explicitly called a brothel, the astute juror may have noticed this parallel and further understood Euthydicus as someone involved in Timarchus' sexual activities. This reading gives an additional angle to the appearance of Euthydicus in [Dem.] 40: we might imagine that, if Euthydicus was chosen by Boeotus to take part in his plot, he may have already been known to be associated with the more disreputable elements in Athens, and thus his refusal to participate in the plot may have cast Boeotus in an even more negative light, being too corrupt even for this crooked doctor. If Euthydicus did indeed have such a reputation, it may be for this reason that the logographer of [Dem.] 40 says little else about him.

In Demosthenes 33.18, the speaker alleges that one of the men who has played a role in concocting a plot to bring a false charge against him is a doctor, Eryxias.<sup>28</sup> Like Euthydicus, though, his corrupt behaviour is not linked directly to his profession. In fact, he is rhetorically grouped with a number of disreputable figures, and seems to be presented as one of the crowd, though his specific identification as a doctor may have had the effect of heightening the shock value of his activities. In a more professional context, Demosthenes in 19.124 may cast doubt on the integrity of Aeschines' doctor.<sup>29</sup> Demosthenes alleges that, when

himself in one of the shops on a street, it is called a surgery; but if he moves out and a smith moves in, it is called a smithy, and if a fuller, a fuller's shop, and if a carpenter, a carpenter's shop; and if a pimp and prostitutes, from this business it is called a brothel."

<sup>28</sup> ὁ δὲ ταῦτα κατασκευάζων ἦν Ἐρυξίας ὁ ἰατρός ὁ ἐκ Πειραιῶς, "The one who constructed this [plot] was Eryxias the doctor from Piraeus."

<sup>29</sup> ἔδει δὲ μένειν. πῶς οὖν; ἀρρωστεῖν προφασίζεται, καὶ λαβὼν Ἐξήκεστον τὸν ἰατρὸν ἀδελφὸς αὐτοῦ καὶ προσελθὼν τῇ βουλῇ ἐξώμοσεν ἀρρωστεῖν τουτοῦ καὶ αὐτὸς ἐχειροτονήθη, "But it was necessary to stay. How? He made the excuse that he was ill, and, taking Execestus the doctor, his brother

he himself chose to remain in Athens when the third embassy was selected to be sent to Philip, Aeschines also desired to remain in order to block Demosthenes if he attempted to persuade the Athenians to change their course of action in an extraordinary meeting of the assembly. Aeschines could not reject the appointment without reason, and so Demosthenes implies that he concocted a tale of illness, and his brother took Aeschines' doctor Excectus to the council in order to support the claim. The suggestion here is that the doctor was in on the plot, and willing to testify falsely to Aeschines' illness in front of the council. For Aeschines' part, he claims that he was ill when initially appointed to the embassy but accepted the role so long as he was strong enough; it transpired that when the embassy was ready to set out, he was too unwell, and that he in fact sent the doctor with his brother in order simply to inform the council of the situation (Aeschin. 2.94–95).<sup>30</sup> Both Demosthenes and Aeschines do portray the doctor as a necessary professional in testifying to the severity of an illness, as in Demosthenes 54, though in this case to the council rather than in the courtroom.

*Doctors as witnesses*

All of the doctors examined up to this point have been metaphorical or narrative figures, who were not necessarily present in the courtroom. We do, however, have a few surviving examples of doctors who appeared as witnesses in the course of a trial. A possible doctor as witness can be found in Demosthenes 30, where a witness is brought forth to testify that a man named Aphobus was with a certain woman during an illness, as evidence that the two are openly living as a couple. The witness,

went before the council and swore in excuse that he was ill, and was appointed to the office himself.”

<sup>30</sup> πρὸς δὲ τὴν βουλὴν ἀπιόντων τῶν συμπρέσβων τὸν ἀδελφὸν τὸν ἑμαυτοῦ καὶ τὸν ἀδελφιδοῦν καὶ τὸν ἰατρὸν ἔπεμψα, οὐκ ἐξομυμένους· οὐδὲ γὰρ ὁ νόμος ἐᾷ τὰς ἐκ τοῦ δήμου χειροτονίας ἐν τῇ βουλῇ ἐξόμνησθαι· ἀλλὰ τὴν ἀρρωστίαν μου δηλώσοντας, “I sent before the council, as the embassy was setting out, my brother and my nephew and the doctor, not to swear in excuse; for the law does not allow those elected by the *dēmos* to swear in excuse before the council; but to declare my illness.”

one Pasiphon, is not described explicitly as a doctor (*iatros*); rather it is said that he was the one who “was caring for” her (*therapeuōn*) in her illness. Pasiphon does not seem to testify to any medical matters, but rather the co-habitation of the couple, and nothing more is said about his role in this case.

Apart from Demosthenes 54, we have one other reference to doctors apparently acting as witnesses in a way that requires their medical knowledge. It appears in Lysias fr.20a Carey, from the speech *Against Antigenes Concerning Abortion* (or simply *On the Abortion*). The fragment, from an anonymous prolegomenon to Hermogenes’ *Staseis*, notes that in the speech Lysias tries to establish the foetus as a living thing, and so repeatedly says ὡςπερ οἱ ἰατροὶ καὶ αἱ μᾶλαι ἀπεφήναντο. Todd accurately translates this “as the doctors and the midwives made clear.”<sup>31</sup> Kapparis translates “as the doctors and the midwives have stated,” and characterises this as courtroom testimony delivered by doctors based on “their own professional opinion as well as that of some midwives with whom they had a consultation before appearing as witnesses.”<sup>32</sup> Pepe also refers to “depositions” here.<sup>33</sup> Gernet and Bizos use the softer language of “opinion” (“l’avis”), though they describe the reference to doctors and midwives as a “chose d’autant plus notable que l’idée propre de l’expertise est une rareté dans la procédure grecque.”<sup>34</sup> This is far from a certain reference to the presence of medical professionals in the courtroom acting as ‘expert’ witnesses. No explicit reference to the legal language of witness testimony (μαρτυρία) is preserved. Of 27 other uses of forms of ἀποφαίνω besides this one in the forensic corpus of Lysias (excluding two fragmentary uses where the meaning cannot be verified), none refers explicitly to the delivery of witness testimony or to any

<sup>31</sup> S. Todd, “Lysias on Abortion,” *Symposium 1999* (Cologne 2003) 255.

<sup>32</sup> K. Kapparis, *Abortion in the Ancient World* (London 2002) 188.

<sup>33</sup> L. Pepe, “Abortion in Ancient Greece,” *Symposium 2013* (Vienna 2014) 52.

<sup>34</sup> L. Gernet and M. Bizos, *Lysias. Discours II* (Paris 1989 [1926]) 240.

kind of ‘statement’; the closest to this in uses of the verb is in denoting the showing, demonstrating, or proving of some general argument in a forensic speech.<sup>35</sup> Even if we do interpret this phrase as referring to courtroom testimony, the witnesses themselves present a problem: midwives, presumably female, would have been disqualified from giving testimony in the courtroom.<sup>36</sup> To group the doctors and midwives together, then, presents several possibilities: (a) the doctors testified on behalf of themselves and the midwives on the grounds of medical knowledge; (b) there were doctors and midwives present at the delivery of the aborted foetus in this instance, who noted its state of development, and that doctors or others present testified to this (i.e. to what they saw, the traditional content of the witness statement)<sup>37</sup> in the courtroom; (c) the phrase represents knowledge, perhaps in the Hippocratic texts or similar, generally held by doctors and midwives. The question cannot be resolved for certain given the fragmentary nature of the speech, though the

<sup>35</sup> Besides this, the most common use of the verb is to refer to “exposing” the bad or illegal behaviour of the opposing litigant or one of his associates. Two uses in *Lys.*12.86 present (hypothetical) witnesses as the subject of the verb, but the meaning is clearly one of misrepresentation, or making something “appear” to be the case.

<sup>36</sup> On women’s inability to deliver testimony themselves and the possibility of the submission of their testimony to the court by a man, see R. Just, *Women in Athenian Law and Life* (London 1989) 33–39; M. Gagarin, “Women in Athenian Courts,” *Dike* 1 (1998) 41–45.

<sup>37</sup> See G. Thür, “The Role of Witnesses in Athenian Law,” in M. Gagarin et al. (eds.), *The Cambridge Companion to Ancient Greek Law* (Cambridge 2006) 153; D. Mirhady, “Athens’ Democratic Witnesses,” *Phoenix* 56 (2002) 262–263. For an argument constructing the role of this ‘truth-telling’ around the movement of conflict resolution away from community arbitration and into more centralised litigation, which posits witnesses as a way of bringing community knowledge into the courtroom, see S. Humphreys, “Social Relations on Stage: Witnesses in Classical Athens,” *History and Anthropology* 1 (1985) 313–369. For an alternative view on the role of witnesses, which understands them in a social model as primarily playing a status-based role in the courtroom, see S. Todd, “The Purpose of Evidence in Athenian Courts,” in P. Cartledge et al. (eds.), *Nomos: Essays in Athenian Law, Politics and Society* (Cambridge 1990) 19–39.



instance is certainly less compelling than the testimony of Ariston's doctor.

Thus we return to Demosthenes 54. The speech documents the speaker Ariston's charge against Conon for an alleged violent assault. Ariston claims that he suffered such great wounds at the hands of Conon that his life was in danger; he opens his speech with the assertion that "none of my relatives or doctors thought that I would survive" (54.1). In narrating the attack, he notes that a doctor was called to examine and treat him. It is presumably the same doctor who is called as a witness during the trial. The discrepancy between the plural "doctors" in the opening and the singular "doctor" in the narrative and when introducing the witness statements is ambiguous; the plural is also repeated at 36, where Ariston asserts that he "brings doctors as witnesses." As Carey and Reid note (*Demosthenes* 84),

it would seem that either only one doctor attended him, and he seeks to strengthen his case by exaggerating the number of expert judgements on the seriousness of his condition, or several doctors attended him, only one of whom was convinced that Ariston was close to death.

But these are not the only options: it may also be the case that one of Ariston's doctors was either disqualified from acting as a witness, or had left Athens by the time of the trial; or, indeed, that the two witness statements were delivered by two different doctors. If the two witness statements at 10 and 12 were given by the same doctor, the statement at 36 would be inaccurate. It may refer to the testimony of witnesses presented immediately afterwards in 36, but these are not explicitly identified as statements made by doctors, as the other statements in the speech are. It could also be simple exaggeration, though the lie would be easily spotted by the jurors. Whether the two statements were given by the same doctor or different ones should make little difference to the interpretation of the effects of their statements, though the question cannot be resolved.

The content of the first statement is not immediately clear, but it may attest to the fact that the doctor in question saw Ariston, surrounded by his friends, in the immediate aftermath of the

alleged assault, and that he treated him (54.11–12). This statement speaks quite simply to the facts as the doctor witnessed them. The second statement, however, relies on professional knowledge. Ariston says that the doctor noted superficial bruising, but was concerned by the “great and terrible pains” throughout Ariston’s body and particularly in the chest and stomach. The exact nature of the illness is hard to determine from the text, but whatever it was, Ariston notes that the doctor believed that it was only a spontaneous discharge of blood, perhaps coughed up, that saved Ariston from dying as a result of his internal injuries.<sup>38</sup> The witness statement appears after this description, and is introduced as testimony to the fact that the men’s attack caused such a severe sickness that Ariston almost died. The doctor’s statement appears to have been accompanied by statements from others who attended Ariston in his sickness. This second statement speaks to the idea that the doctor could assess the severity of Ariston’s wounds, presumably because he was an experienced professional and as a result of his expert examination of his patient. This statement has even been interpreted as a precursor to expert testimony, although no such concept seems to have existed formally in Athenian law.<sup>39</sup>

<sup>38</sup> Carey and Reid, *Demosthenes* 85, interpret the illness as “either a pneumonic infection resulting indirectly from beating or exposure (depending on the time of year at which the incident took place) or direct injury to a lung resulting from the blows, such as a broken rib puncturing and collapsing a lung.” The second interpretation seems more compatible with the description of the sudden discharge of blood.

<sup>39</sup> Bonner, in his seminal work on Athenian evidence, follows Lipsius that “the Orators were unconscious of the difference between an expert and a regular witness”: R. J. Bonner, *Evidence in Athenian Courts* (Chicago 1905) 79–80). Harrison agrees that “expert evidence by such witnesses as doctors hardly formed a special category”: A. R. W. Harrison, *The Law of Athens II Procedure* (Oxford 1971) 134. Wolpert and Kapparis call the use of expert witnesses “fairly uncommon” but regard the *Against Conon* as an “important source for understanding the use of expert witnesses”: A. Wolpert and K. Kapparis, *Legal Speeches of Democratic Athens: Sources for Athenian History* (Indianapolis 2011) xxvii, 174. Amundsen and Ferngren call the doctor’s testimony here “nothing less than the testimony of the physician *qua* physician”: D. W. Amundsen and

On the two occasions when the doctor's testimony is introduced, it is clearly distinguished from that of the other witnesses.

Dem. 54.10:

λάβ' οὖν καὶ τὰς τούτων μαρτυρίας, ἵν' εἰδῆθ' ὅτι πολλοὶ συνίσασιν ὡς ὑπὸ τούτων ὑβρίσθην. “Μαρτυρίαὶ” λαβὲ δὴ καὶ τὴν τοῦ ἰατροῦ μαρτυρίαν. “Μαρτυρία”

And so take the testimony of these men, so that you may know that many are aware of how I was abused by these men.

[Witnesses] And indeed also take the testimony of the doctor.

[Witness]

Dem. 54.12:

λέγε τὴν τοῦ ἰατροῦ μαρτυρίαν καὶ τὴν τῶν ἐπισκοποῦντων. “Μαρτυρίαὶ”

read the testimony of the doctor and of those who observed my condition. [Witnesses]

Each instance of testimony from a doctor is probably introduced in this way in order to clearly identify him by his profession and not simply as one of the crowd of men who carried Ariston home or visited him in his sickness. What is the effect of this, and of the highlighting of the doctor as witness later in the speech at 36? Demosthenes clearly intended to make the most of the fact that the doctor was available and willing to testify, and the repetition of his professional status indicates the belief that this will resonate with the dikasts. The rhetorical effect operates on several levels. First, it establishes the professional knowledge and reputation of Ariston's witnesses in contrast to the disreputable characters that Conon will produce. Second, it emphasises the lack of personal connection between Ariston and his doctor-witnesses. Part of the danger of Conon's witnesses is that they are friends of his, and therefore presumably more willing to lie on his behalf. By highlighting that Ariston only knows these witnesses because they were his doctors, he suggests that they are more likely to tell the

G. B. Ferngren, “The Physician as an Expert Witness in Athenian Law,” *Bulletin of the History of Medicine* 51 (1977) 206–207. Even Bonner, who otherwise doubts the presence of expert testimony in Athenian courts, calls this “the real beginnings of expert evidence” (80). See also Hall, *BICS* 40 (1995) 53, and Humphreys, *History and Anthropology* 1 (1985) 327.

objective truth of what happened. Third, the speech anticipates that Conon will argue that the whole matter was trivial, that fighting is natural for young men, and that Ariston is blowing both the attack and his own injuries out of proportion (13–15). Ariston states near the beginning of the speech (1) that he was inclined to bring a more serious, public charge, but was dissuaded by his friends because of the danger this could pose both to his reputation and in the penalty he would be subject to if he did not receive one-fifth of the votes. By repeatedly drawing attention to the doctor, Ariston reaffirms the gravity of the attack and its effects, complementing his strategies of characterising Conon and his family as habitually violent and of referring to the attack as *hubris*, a more serious offence than *aikēia*, the actual charge. The doctor's profession is used as a repeated reminder of the grievous damage done to Ariston by Conon, and thus an encouragement to the *dikasts* to vote to convict him on the charge of assault.

### *Conclusion*

A survey of the forensic uses of doctors reveals their particular rhetorical resonances. Many doctors are presented as trustworthy and competent, particularly those who appear in figurative passages, where doctors become emblematic of protection against danger to the body and thus an easy analogy for the democratic forms of protection against danger to the city and the people that litigants regularly draw attention to. Actual doctors in narratives, too, can be positive figures, offering their professional services and even standing up against criminals, whether for the sake of justice or simply to protect their own reputations. Doctors are far from consistently portrayed in a positive light, however, and the more negative views range from the incompetent to the actively unscrupulous and seedy.

A particularly interesting feature that emerges is that a specific doctor's untrustworthiness is almost always tied to his association with another negatively portrayed figure, most often the speaker's opponent. Demosthenes portrays Aeschines' doctor as deceitful because he wishes to portray Aeschines as deceitful; a similar model applies to the doctors in Demosthenes 33 and

Aeschines 1. On the other hand, where doctors appear to be particularly positive, it is often due to a supporting connection with the speaker's own case, as in Demosthenes 47 and the previous *trauma* charge mentioned in Demosthenes 40. There is very little consistency in presentation, and in short, these doctors are characterised as either upstanding or unscrupulous not because of any perceived professional or social status, but because of their rhetorical characterisation in a manner that either supports the speaker's case or attacks that of his opponent. Almost as much as figurative doctors, real doctors in the courts are essentially the rhetorical constructions of the logographers. Even in cases where doctors acted as witnesses in ways that relied on their professional knowledge, the presentation of their profession could be manipulated to fit the speaker's agenda, whether to emphasise expertise, objectivity, or the seriousness of the situation.<sup>40</sup>

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