

Book Review

MALPRACTICE IN PSYCHOTHERAPY, Barry F. Furrow, Esq., Washington College of Law, the American University. Published by Lexington Books, D.C. Heath and Co., Lexington, MA. Toronto. 1980.

Reviewed by John K. Torrens, MD

This book, written by an attorney, is short, well packaged and eye-catching, with its arresting title stamped in black on a bright red cover. The title, however, is somewhat deceptive. The author defines psychotherapy as all therapy done to the psyche, including somatic and verbal therapies. Recognizing the real scope of this book and not the apparently limited scope that one might think from the title, it is a disappointing book. The author attempts to survey the whole field of malpractice in psychiatry. Thus, the multiple problems of negligence in psychiatry are covered in a superficial manner and are particularly sparse in the area of malpractice and verbal psychotherapy.

The author, however, has a point which he makes strongly and well and which is certainly worth consideration. He feels that the psychiatric patient needs more legal protection, and it is our responsibility as psychotherapists (somatic and verbal) to insure this protection. His bias is evident in the statement, "Psychotherapists are experimenters for profit in an experiential and high-risk activity in a field still largely unknown." He believes that there should be a single standard for everyone in the field of psychotherapy, that standards would prevent the less competent from escaping liability and that litigation will "Force a new field to grow up in public. Perpetrators of harm need to be stopped, and patients need more information about possible risk."

The author's suggestion for remedying this situation is "strict liability." He believes this would alleviate the difficulties of proof and would compensate more patients for what he feels are the grievous damages done to some patients. This he calls "pressure on the provider." The author feels that the risk of therapy and its induced injuries should be assumed by the psychotherapists and not the patients. He cites, as a legal analogy, the concept of product liability and the liability in so-called blasting cases which are quoted at some length.

The author states that strict liability has not yet been applied to providers of professional services as it has been for the sale of goods for several reasons. The provider of a service is assumed to be less able than a manufacturer to detect and eliminate defects. The provider of a service generally has fewer assets, thereby a reduced loss-spreading ability. Thirdly, consumer expectations as to services do not include a particular result. Finally, proof of negligence is easier in service failure cases. The author suggests that the

criteria of strict liability be applied to the delivery of psychiatric services. He believes that consumer expectation should be used to set a minimal performance level. He strongly urges litigation to promote this concept and to promote the necessary legislative changes. He feels that "Courts can be expected to develop workable and fair rules governing the burden of proof and sufficiency of evidence, and that juries can be expected to scrutinize claims and evidence carefully." The author makes an attempt to present some of the arguments against this concept of strict liability, but is frankly (and understandably) biased toward his concept and gives relatively short shrift to the opposite side of the argument.

In spite of, or maybe because of all of the above, I believe that forensic psychiatrists should be acquainted with this book. This is not the last of this subject to be heard from our esteemed colleagues in the law.

The index is well-done and the notes are copious with more citations than one would believe possible (or necessary) to accumulate for such a tome. This book will not give the reader a complete understanding of malpractice and psychotherapy, but it is an interesting exposition of an attorney's very strong belief about the need for strict liability in our field. □