



E54 Why and How — Reforming Medical Liability in Psychiatry

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After attending this presentation, attendees will understand some of the principles of the medical liability in psychiatry, a field in which reaching the evidence of legal responsibility is particularly hard.

This presentation will impact the forensic science community by presenting a possible solution for reforming medical liability in psychiatry.

The necessary respect of the medical activity of the psychiatrists implies that their liability, as for other doctors, could be declared only in presence of convincing evidence both of negligence and of causality; however, reaching such evidence is extremely difficult, for many specific reasons. First, not every failure in judgment can be automatically translated into negligence, as there is negligence only when there is "a failure to meet the standard of care."

Furthermore, the predictability of the auto- or hetero- offensive acts must be evaluated *ex ante*, in concrete terms and cannot be deducted, in general and in theory, from the diagnosis. It would be improper to consider suicide as predictable in all patients affected by major depression or to assume homicide as predictable in all chronic schizophrenic patients. It is especially necessary to avoid being influenced by facts which occurred after the psychiatrist treatment.

Therefore, in order to avoid subjecting the psychiatrist to an excess of review, it is essential to interpret the predictability in a strict manner, by considering only those circumstances as foreseeable in which the clinical history and the specificity of the moment make to reasonably assume the harmful event as probable and not only possible in theory.

Moreover, the predictability requirement cannot be automatically inferred from the state of unsound mind of the murderer. Such condition could derive, for example, from an unforeseeable and sudden flaring up of the pathological state, linked to some peculiar events in the patient's life of which the psychiatrist was unaware (e.g., a death in the family, the loss of job by a person that was under therapy but able to normally work). Such an event could provoke an unforeseeable and uncontrollable reaction.

Furthermore, when there is not a total state of unsound mind, the homicidal or suicidal behavior can't be evaluated as exclusive expression of the psychopathologic state and therefore no certain judgment could be formulated concerning the foreseeability of the event from the doctor, just because the patient's conduct was not entirely "pathologic," but was also an expression of his/her self determination ability, even if partial.

Finally, the need to protect the freedom and the dignity of the patient prevents the ability to control him/her physically and pharmacologically, with the exception of rare cases. Therefore, it is often impossible to avoid the harm.

Because of the difficulty in demonstrating liability in psychiatry, in some cases the Supreme Italian Court tends to reduce the degree of proof necessary to convict the doctor. This solution is questionable because it compromises the professionalism of the psychiatrists and reduces their constitutional right of defense. On the other side, applying rigorously the rules of medical liability also in psychiatry would reduce the number of convictions and this could induce psychiatrists to have less careful conducts towards the patient's interest.

In order to prevent this risk, it appears necessary to create a statute that, on the one hand, binds the health facilities to provide doctors with more strict guidelines and, on the other hand, increases the power of the health facilities to sanction imprudent doctors independently from the occurrence of damage and the presence of causality.

In this way, the protection of the patient's health is reinforced through the prevention of negligence rather than through the compensation of damages. As a consequence, a general reduction of the legal proceedings is also obtained, improving the quality of clinical practice.

Psychiatry, Medical Liability, Reform