

Liable to Whom? Psychiatrists' Expanding Duty of Care in Crime Victim Litigation

■ By Jeffrey R. Dion, Esq., Managing Editor

Three recent cases arising out of criminal acts have prompted a reconsideration of psychiatrists' duty to their patients and third parties outside the scope of the doctor-patient relationship. Each of the cases supported the recovery of damages by accused perpetrators against their own psychiatrist or that of their victim. At first glance, the results appear absurd and have left many observers scratching their heads and asking, "who is the victim here?" However, the silver lining of the following cases is that they may, in fact, support efforts of victims to hold accountable those persons whose negligent conduct facilitated criminal acts. Also, if a perpetrator can collect against a negligent third-party, he may then have resources to pay damages to the vic-

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Civil Suits and Uncivil Criminal Acts

■ By Beth G. Baldinger, Esq.

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Lisse Jones finally made an appointment with you. It took her several weeks to resist hanging up each time your secretary answered the phone. Ms. Jones was raped in a hotel by her boss, a wealthy banking executive, while on a company business trip. She hasn't told anyone except a rape crisis counselor, who referred her to your office.

Louise and John Williams are coming to see you. Their son, an honor roll student, was gunned down by feuding gangs at a housing project where his high school sent him to tutor a disabled child. The young man's murder is a tragedy that has been the focus of extensive media attention.

Mary Lewis left a telephone message asking that you call her at the local women's shelter where she is hiding, along with her children. Her husband, who beat her severely, came dangerously close to fulfilling his threats to kill her. She is afraid and needs protection.

While these callers share a common title—victims of violent crime—the nature of their individual victimization sets them worlds apart in terms of legal options and how you can best help them.

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Williamson v. Liptzin

In 1992, when Wendell Williamson was a law student at the University of North Carolina-Chapel Hill, he was diagnosed as a paranoid schizophrenic during a stay at a UNC Hospital. In March 1994, Williamson was referred by Student Health Services to Dr. Myron Liptzin, a psychiatrist employed by the University. Dr. Liptzin prescribed low doses of anti-psychotic medication and counseled Williamson for two months before retiring in May 1994. Eight months after Dr. Liptzin suspended treatment, Williamson went on a random shooting rampage in a Chapel Hill restaurant. When the shooting spree was over, Williamson had killed restaurant owner, Ralph Walker, Jr., and UNC student Kevin Reichardt, and injured a police officer. In November 1995, Williamson was found not guilty of capital murder by reason of insanity, and committed to an institution until he is judged to no longer be a threat to himself or others.

Williamson sued Dr. Liptzin alleging that he had negligently failed to ensure that he would continue to receive treatment after Liptzin retired and failed to advise him about the chronic nature of his disorder and that future treatment and medication would be required. In September 1998, an Orange County, North Carolina Superior Court jury found in favor of Williamson and awarded him \$500,000 in damages. The victims' families, who were devastated by Williamson's acquittal in the criminal trial, found the civil verdict difficult to accept. Looking beyond the rather surprising fact that Williamson was able to shift the blame for shooting three innocent people and win half a million dollars in damages, the legal doctrines supporting the award may prove equally beneficial to Williamson's victims and countless others by vastly expanding the scope of a psychiatrist's duty of care.

The law allowed a finding by the jury that Dr. Liptzin was liable for the damages resulting from Williamson's killing spree because it was reasonably foreseeable that criminal violence could result from a lack of proper treatment. If Dr. Liptzin can be held responsible for the shooting and its impact on the killer then it is conceivable that he might also be found responsible for the consequences suffered by the victims and their families. Indeed, Kevin Reichardt's family has a claim against Dr. Liptzin and his employer, the University of North Carolina, pending before the North

Carolina Industrial Commission which must first hear all claims against the state. The Reichardts previously filed a wrongful death suit against Williamson and his parents, but agreed to an out-of-court settlement. As for Williamson benefitting from his crime, it is unlikely that he will receive any of the judgment proceeds, as the state has placed a lien against any recovery by Williamson to cover the continuing cost of his care and treatment at Broughton State Hospital.

Althaus v. Cohen

In 1990, at age 15, Nicole Althaus reported to a counselor that she had been sexually abused by her father. Consequently, she was placed in the custody of Children and Youth Services and began treatment with Dr. Judith Cohen, a psychiatrist at a youth sex abuse clinic. Criminal charges were brought against Nicole's parents. Through the course of her treatment, Nicole made "increasingly outlandish" allegations that she was subjected to ritualistic torture and that she had given birth to several infants that were delivered by caesarian section and then murdered by her parents. Dr. Cohen became actively involved in the prosecution of Nicole's parents.¹

Despite the seriousness of the charges brought against the parents, Dr. Cohen made no effort to evaluate the credibility of Nicole's claims even though they were unsupported by any evidence and in many cases were physically impossible. Eventually, Nicole was diagnosed by an independent psychiatrist who determined that she suffered from a personality disorder that prevented her from distinguishing between real and imagined events. The criminal charges against Nicole's parents were subsequently dropped.²

The Althaus family filed suit against Dr. Cohen and won, successfully arguing that she was negligent in both her treatment of Nicole and her participation in the criminal proceedings against them. Dr. Cohen appealed the verdict on the grounds that she owed no duty of care to Nicole's parents. The Pennsylvania Superior Court held that, "despite the absence of a psychiatrist-patient relationship between the psychiatrist and the parents in this case, the psychiatrist owed them a duty of care because the psychiatrist's actions extended well beyond the psychiatric treatment of the child."³

The court stated that there was no absolute duty of care to a patient's parents for negligent diagnosis and treatment, but that Dr. Cohen's

active involvement in pursuing criminal charges against the parents made it reasonably foreseeable that they could be harmed by her negligent diagnosis. The court concluded that the ruling imposed no duty of care on therapists, but rather restated what is already required: "a competent and carefully considered professional judgment."⁴

Though this case too, may be seen as contrary to victim interests, it reinforces Pennsylvania's willingness to impose liability on a professional for damages suffered by a third-party in "instances where the policies limiting the professional's liability pale in comparison to the harm at issue."⁵ The court acknowledged that similar to a case of a communicable disease, the treatment rendered to the patient is not just for the patient's benefit, but for the benefit of third-parties who may be harmed. Where that third-party is a crime victim or a potential crime victim, the breach of the professional's duty of care may open additional avenues of civil recovery.

Sawyer v. Midelfort

Nancy Anneatra began psychiatric treatment as an adult in the early 1980's with Dr. H. Berit Midelfort, a psychiatrist who diagnosed her with multiple personality disorder, and Celia Lausted, a therapist who operated under the supervision of Dr. Midelfort, but was unlicensed during the first nine years of Anneatra's treatment. In 1985, Anneatra accused her father of sexually and physically abusing her, stated that her mother physically abused her and failed to prevent her father's sexual abuse, and that various other persons sexually abused her as well. She then cut off all contact with her parents. In 1988, she filed a lawsuit against her parents claiming sexual abuse. The law suit was dismissed shortly thereafter, but Anneatra never again spoke with her parents before she died of cancer in 1995.⁶

Following Anneatra's death, her mother, Delores Sawyer was appointed executor of her estate. She obtained her daughter's medical records and claims to have learned that her daughter's accusations were based upon the recovery of allegedly false memories. Prior to reviewing the medical records, the Sawyers claimed that they did not know the basis for the accusations. The Sawyers filed suit against Lausted and Midelfort claiming that they negligently caused Anneatra to develop false memories and that this negligence caused Anneatra to falsely believe she had multiple personali-

ties. Lausted and Midelfort moved for summary judgment claiming, in part, that the Sawyers failed to state a claim and that public policy grounds barred the action. Summary judgment was granted in favor of Lausted and Midelfort. The Sawyers appealed the trial court's decision.⁷

Lausted and Midelfort argued that the Sawyers failed to properly state a claim because the defendants had no duty to protect third-parties from purely emotional injuries arising from their malpractice. The Wisconsin Court of Appeals disagreed and held that under Wisconsin law, "a party is negligent if it was foreseeable that the party's act or omission to act could cause harm to someone."⁸ Therefore, the defendants had a duty to ensure that her treatment did not cause harm to others when that harm was foreseeable. The Sawyers properly stated a claim because the harm from being falsely accused of child sexual abuse was readily foreseeable. Accordingly, the court found that summary judgment had been improperly granted and remanded the case for trial.⁹

As psychiatrists are increasingly found to owe a duty of care to parties outside the doctor-patient relationship, crime victims may well benefit from the increased accountability of these professionals. For while crime victim advocates may take issue with these particular cases because they give the impression that perpetrators may profit from their actions, they are illustrative of a positive trend in favor of accountability for the damages proximately caused by the negligence of mental health professionals. Crime victims are often the beneficiaries of that increased accountability.

Victims as Plaintiffs

The preceding cases are not inconsistent with other, more clearly beneficial, cases where the victim was able to recover against a mental health professional for damages resulting from the professional's negligent treatment of the victim's perpetrator. In 1976, the Supreme Court of California held that psychotherapists owed an affirmative duty of reasonable care to third parties who are threatened with physical violence by a patient under a psychotherapist's treatment even though no relationship exists between the therapist and the third-party.¹⁰ Similar cases continue to arise across the nation.

In October 1998, a federal jury in Bridgeport, Connecticut held a psychiatrist liable for another doctor's molestation of a 10-year-old boy because he failed to warn anyone about another doctor's sexual fantasies about children.¹¹ Dr. Douglas Ingram was found negligent because he had disregarded the fact that during a psychotherapy session in their psychiatry training together in the mid-1980s, Dr. Joseph DeMasi admitted to fantasizing about sex with children. DeMasi went on to become a child psychiatrist and later molested three boys, one of whom was 10-years-old at the time. In 1987, he pleaded guilty to risk of injury to a minor and received a seven-year prison sentence. The family of the boy then sued Ingram and the New York Medical College where both doctors were trained. The jury did not find the medical school at fault. Ingram, however, said that DeMasi denied ever molesting a child or fantasizing about a particular child. After consulting five other psychiatrists, Ingram was confident that he had no obligation to report

DeMasi's disclosure. Karen Koskoff, attorney for the plaintiff, denied that the case dealt a blow to doctor-patient confidentiality because, "DeMasi was seeing Ingram for certification purposes, not for (normal) therapy, and this has a reduced expectation for confidentiality."¹² Prior to a finding on damages, the parties settled the matter for an undisclosed amount.¹³

Conclusion

While the expanded duty of care for psychiatrists may, in some unusual circumstances, be a double-edged sword for victims, it continues to become a valuable tool for holding third-parties liable. Broadening the scope of a psychiatrist's duty of care to third parties who may be injured by their acts or omission, will allow for greater recovery by both perpetrators and victims. Though a recovery of damages by a perpetrator may seem unjust to the victim, it will provide assets that the victim could collect in a civil suit of their own. ■

1. *Althaus by Althaus v. Cohen*, 710 A.2d 1147, 1149-1150 (Pa.Super. 1998).

2. *Id.*, at 1150-1151.

3. *Id.*, at 1149.

4. *Id.*, at 1157.

5. *Id.*, at 1152 (citations omitted).

6. *Sawyer v. Midelfort*, 579 N.W.2d 268 (Wis. Ct. App. 1998).

7. *Id.*

8. *Sawyer v. Midelfort*, 579, N.W.2d 268 (Wis. Ct. App. 1998).

9. *Id.*

10. *Tarasoff v. Regents of University of California*, 17 Cal.3d 425, 551 P.2d 334, 131 Cal. Rptr.14 (1976).

11. Denise Lavoie, *Jury Faults Psychiatrist for Not Revealing Colleague's Pedophilia*, Associated Press, October 8, 1998.

12. *Psychiatrist Who's Found Liable for Patient's Crime Pays Victim*, Reuters News Service, October 9, 1998.

13. *Id.*

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For example, how will the delay in reporting the rape affect Ms. Jones' right to seek justice, in both the criminal and civil contexts? Has rape trauma syndrome—which would explain her reluctance to come forward—been judicially recognized in your jurisdiction?

In addition to intentional tort claims against the victim's boss, can you prove a history of harassment by the perpetrator or assaults of others in that workplace? How did Ms. Jones' boss get into her hotel room? Were there breaches in security that may support a premises liability claim?

By way of comparison, do the Williamses have a wrongful death claim against the school for sending their son to a place school administrators should have known was unsafe? What is the viability of claims against the housing project owner? Are the school and housing project privately or publicly owned, and will they be able to claim immunity?

Was the gang shooting in the Williams case a superseding intervening act or was it a foreseeable criminal act? How can you help balance the family members' need for privacy and their desire to publicly support strong measures for swift criminal justice against the gang members? As a plaintiff's lawyer, when

and how do you interact with criminal prosecutors?

What about Mrs. Lewis? After she secures an order of protection, what are her short- and long-term options, both in terms of litigation and her personal life? Will she resume this abusive relationship if her husband apologizes, or was this latest act of violence the last straw for her? How will you handle her decision? If she wants to divorce him, should she also sue for damages for this battering and prior acts of domestic violence? What are the marital assets for judgment collection on the tort claim? How will that affect child support or alimony?

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