A TEXTBOOK OF FORENSIC ADDICTION MEDICINE AND PSYCHIATRY

Publication Number 1100

AMERICAN SERIES
IN
BEHAVIORAL SCIENCE AND LAW

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By

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Charles C Thomas
PUBLISHER • LTD.
SPRINGFIELD • ILLINOIS • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62794-9265

ISBN 978-0-398-07185-1 (paper)

Library of Congress Catalog Card Number: 2001017414

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Printed in the United States of America
CR-R-3

Library of Congress Cataloging-in-Publication Data

Erlich, Lawrence B.
A textbook of forensic addiction, medicine, and psychiatry / by Lawrence B. Erlich.
p. cm. -- (American series in behavioral science and law)
"Publication number 1100."
Includes bibliographical references and index.

ISBN 978-0-398-07185-1 (paper)

1. Forensic psychiatry. 2. Substance abuse. 3. Medical jurisprudence. 4. Substance abuse--Law and legislation. I. Title. II. Series.

RA1152.S83 E73 2001
614'.1--dc21

2001017414

DEDICATION

This is the first book that I have written and at my age this may well be the last book that I will ever write so this may be the only chance that I will have to express my gratitude to the addiction medicine specialists who have been a special inspiration to me. This book is dedicated to:

Milton E. Burglass, M.D., one of the country's outstanding addiction psychiatrists. Dr. Burglass was kind enough to spend hours at an ASAM meeting with me and my wife talking about his practice of addiction psychiatry.

David E. Smith, M.D., who is perhaps the country's leading forensic addiction specialist and a man whose lectures and career have been an inspiration to me since the summer of love when he founded the Haight-Ashbury Free Clinic.

Donald Ian MacDonald, M.D., a man whose place in the history of addiction medicine is secure because he created the concept of the medical review officer and established the leadership of physicians in the field of creating a drug-free workplace.

FOREWORD

What are addictions? What are their consequences? What is the history of the legal regulation of addicting substances? What about the impact of addiction on rates of crime? What about its impact on sexual behavior or on child custody? What about compulsive gambling? What are the advantages or disadvantages of "drug courts" that have recently been developed around the country? What is the impact of addiction on criminal responsibility? What about the drug-free workplace? What about the impaired physician? What can law or psychiatry contribute to dealing with addiction? What are the misperceptions of the role of psychiatry in dealing with addiction?

Dr. Lawrence B. Erlich offers this book as the first attempt to bring all of the information relevant to forensic addiction psychiatry and medicine in one place. He writes not as a researcher distant from the firing line but from years of experience in working in forensic addiction psychiatry. He describes the unique role of the forensic addiction specialist. For most of the book, he deals with the reader as an expert witness or as a clinician. In the latter part of the book, he deals with the reader as a defendant in a potential malpractice suit. He also frames his discussion with an overview of the operation of the legal system. Members of the legal as well as the medical profession will find the book informative. His is a book of practical utility.

Dr. Erlich is a former general practitioner who went into psychiatry after Vietnam service because he felt that since he was spending most of his time dealing with the emotional aspect of his patients' problems, and he might as well get the formal training so that he could be good at it. Subsequently, he has been active in the American Psychiatric Association, and was president of the New Jersey district branch and editor of the newsletter of the Louisiana district branch. He was chairman of the Psychiatry Section and a member of the board of directors of the American Academy of Forensic Sciences. He has been chairman of two hospital departments of psychiatry, and he is a Fellow of the American Psychiatry Association, the American Academy of

Forensic Sciences, and the American College of Medical Quality. He is certified by the American Board of Psychiatry and Neurology with added qualifications in Addictions and Forensics. He is also certified by the Board of Quality Assurance and Utilization Review. He is also a certified Medical Review Officer, which is relevant to his chapter in the book on Drug Free Workplace. Over his career he has received nine awards for service and academic achievement.

Ralph Slovenko
Editor
American Series in
Behavioral Science and Law

PREFACE

This book is a beginning. This is the first attempt ever made to collect all of the information relevant to forensic addiction psychiatry and medicine in one place. Most of this information exists in other books and in the literature, but it often has the wrong emphasis. For example, Richard Rosner's edited textbook of forensic psychiatry is state-of-the-art today. It has an excellent chapter on impaired physicians, but the chapter says nothing about addiction or chemical dependency, and chemical dependency is the principle cause of impairment in physicians. This book is intended to cover every aspect of forensic addiction psychiatry and medicine with relevant references so the reader can peruse the subject in more detail. The book covers issues as different as dram shop litigation and the drug-free workplace, calculation of blood alcohol level, and drug courts.

The second reason for writing this book is to emphasize the unique position of the forensic addiction specialist. A psychiatrist has to deal constantly with the distortions that the public and even the medical profession has about psychiatry, such as that our patients are not sick but are really the worried well, that we are experts in lie detection and can read minds, that we never help anybody, and that we are all crazy ourselves. A forensic psychiatrist has to deal with the distorted notions about the field, that is, that we never agree on anything, that we spend our time making excuses for vicious criminals, or that there is a "cure" for criminal behavior. The addiction specialist has to deal with the distortions that are often prevalent about that illness, such as, "I drink because I have a problem and I can't stop drinking until that psychiatrist tells me what my problem is," and in the forensic area, the idea that a criminal who has an alcoholic blackout at the time of his crime should be considered not guilty and incompetent to stand trial because he cannot remember the act.

Each one of these professionals has to fight an uphill battle just to tell the truth. The forensic addiction specialist has to carry all three of these burdens just to tell the truth.

About thirty-five years ago, Professor Ralph Slovenko wrote his groundbreaking textbook on forensic psychiatry. It was one man's attempt to cover a vast amount of material and it was state-of-the-art at that time. Today we have Richard Rosner's textbook, a book written by more than a hundred authors that covers the same material with encyclopedic detail. I can only hope that thirty-five years from now there will be a textbook of forensic addiction psychiatry and medicine of comparable stature.

Lawrence B. Erlich, M.D.

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Chapter 1

INTRODUCTION

There is a concept in the sociology of African Americans called "Black invisibility." This concept states that when reporting events of the past and even when reporting the events of today, the participation of African Americans in those events is absent from the report. The Blacks are invisible, although we know that they were there. In colonial America, that is, the America of the 150 years between the founding of the first European colony in North America up to the revolution, 10 percent of the population was Black, mainly slaves, but the history books that deal with that time period say almost nothing about African Americans. It is as if they were not there, although their numbers indicate that they must have had a significant influence on the culture. They were invisible.

More relevant to our early twenty-first-century culture is the revisionism of recent history forced upon us on political correctness. I am old enough to remember what American culture was like before Martin Luther King, and one of the most striking aspects at that time was that an American citizen could not look in any direction for longer than ten seconds without seeing something racist. The culture was cluttered with minstrel shows, performers (both Black and White), in blackface, wall plaques with cartoons about stupid behavior by Blacks, Jasper cartoons, Al Jolsen movies, Little Black Sambo books and chocolate figures at Easter, etc. Since Martin Luther King, all of these things have disappeared, and we are well rid of them, and that is not the problem. The problem is that when we read books or see movies or television programs about this period, there is no sign of these icons of racism. In the name of political correctness history has been revised, and these items have disappeared.

Let us talk about a Black man of that time who worked three miles from where he lived. Twice a day he walked the three miles to and from work. During that walk he saw perhaps a dozen icons of racism

every morning and evening. What psychological effect did this have on him? For that matter, what psychological effect did these icons have on the White population? I feel these are important questions to ask but the icons that would provoked them have all disappeared. The truth has been made invisible.

Similarly, the truth about forensic addictions psychiatry is close to invisible. There are three reasons for this. First, what the public believes about psychiatry is almost always wrong. Psychiatry as portrayed in newspapers and the media is simply not psychiatry. The goals of drama and the goals of medicine are totally different and this plus ignorance leads the media to produce the worst kind of garbage about psychiatry.

The purpose of medicine is to make sick people into well people. The purpose of drama is to be dramatic. There is nothing dramatic about most of medicine and most of psychiatry. At least half of the patients seen in general psychiatry are depressed. Let us consider the clinical course of a typical depressed patient in a soap opera and then in a real psychiatrist's office.

The patient is a 42-year-old woman who is married with two children. Her husband is a lawyer and she works as a copywriter in an advertising agency. She has won several awards for her work from industry sources. She is due to be promoted to account executive. Over the last several months she has become dissatisfied with her work and she was considering a career change. She lost interest in her work. At home she became irritable and short tempered. She snapped at her children and argued with her husband. She developed crying spells and lost interest in sex. She told her husband that she kept thinking of an episode of sexual abuse when she was a child and those thoughts turned off her sexual impulses. She became more and more withdrawn and eventually she started refusing to go to work.

In a soap opera or movie the woman would eventually end up under the care of a psychiatrist who would treat her with psychotherapy or possibly even with psychoanalysis. The focus of the treatment would be the sexual abuse that occurred in her childhood. The therapy would dwell on that episode with descriptions of events, flashbacks, and lots of crying and dramatic expressions of feeling. There would be remissions and exacerbations and possibly suicide attempts. If the actress renewed her contract with the show, she would get well. If she did not renew her contract, she would commit suicide.

The same case would be very different in reality. In real life the family doctor would see the patient who might treat her himself or who might send her to a psychiatrist. In either case she would be treated with antidepressants, and in most cases she would be much better in three weeks, and back to her old self in two months.

There is nothing dramatic about a sick patient who goes to the doctor, gets a pill, and gets better. There is no room in the media for such a scenario. But the media version is what the public knows and believes. How many times have you seen psychiatrists in the movies and on television whose behavior has nothing to do with what a real psychiatrist does? How many times have you had someone say to you that for a person to abuse drugs or alcohol he must have a "problem" and that if the psychiatrist would only tell the patient what his "problem" is he can stop drinking? This system of beliefs, which is held by a majority of the general public and also by juries and often judges is used by our patients to support their destructive behavior. The truth is invisible. It is as if the truth about addictions is not there.

In addition, some of the problems arise from the psychiatric community. Doctors very commonly fail to diagnose addiction problems. For example, a short time ago I was at a teaching conference for forensic psychiatrists, and the subject being discussed was violence. A case was presented as follows: A man was hospitalized for threatening to kill his boss. He was known to be a heavy drinker although he reported in his history that he only drank a few drinks now and then. The professor who was teaching the course asked the audience for suggestions for a treatment plan for this man. There were about 150 forensic psychiatrists at the meeting and about fifty of them gave suggestions, but only two of them had the temerity to suggest that this man's alcohol use had to be explored in detail. My feeling was that this man was probably an alcoholic and that he would not stop being potentially violent until he was in a treatment program and clean and sober. However, the suggestion that his substance use history had to be explored carefully, with other sources such as other members of his family, was ignored. My colleagues suggested that this man have help with anger management, that he should meet with his boss, and that he should be treated with medication or psychotherapy. But the addiction issue was ignored by most of the doctors. The issue was invisible.

The general public, including some judges and some nonpsychiatric physicians believe the excuses of the alcoholic. The truth, as reflected

in the good practice of addiction medicine, is unpopular with the general public. For example, some years ago I worked in a clinic in a poor area. A man came in for treatment. He was middle class and he could have afforded private treatment but instead he chose to come to the clinic and to pay the clinic's highest fee, $10 a week, to see me once a week. The patient's problem became clear after several sessions. He was an alcoholic, and every Friday night he went out drinking, came back home and beat up his wife. This went on for many years until his wife said that if he did not do something about his drinking she was going to throw him out. Then he arranged to see me. He kept on going out every Friday night, getting drunk, coming home and beating up his wife, but when she complained he answered, "I'm doing everything I can. I'm seeing that psychiatrist. When he tells me what my problem is I'll be able to stop drinking." For the grand sum of $10 a week he maintained the right to continue to drink and to beat his wife.

The problem from our point of view is that most people would agree with this man, and disagree with the addiction medicine specialist, who would tell this man that the way to stop drinking is to stop drinking. The way to stop is to involve yourself in a treatment program or a twelve-step program, or both, and to use the program to stay abstinent. I told my patient this and he stopped coming to treatment.

Alcoholics cannot control their drinking but they can control their feet. And they can walk those feet into an AA (Alcoholics Anonymous) meeting or a treatment program. I have been working with AA for thirty-five years and I have found them the most accommodating, helpful people I have ever known. It costs nothing and the members will do anything they can for the alcoholic who wants to stop drinking.

Let me give you another example of our invisibility. A major textbook on the legal regulation of medical care has a chapter on impaired physicians without a single reference to the fact that most impaired physicians are impaired by chemical dependency. I once testified that the cause of a psychosis in a prisoner in a county jail could have been caused by cocaine intoxication. The sheriff was incensed, stating that the prisoner was in his maximum-security unit of the jail and there was no cocaine available there. It later turned out that cocaine was available everywhere in the prison.

This book will look at the practice of forensic addiction medicine from two perspectives: Those forensic and legal issues that occur in