

RISK: Health, Safety & Environment (1990-2002)

Volume 3
Number 3 *RISK: Issues in Health & Safety*

Article 13

June 1992

Book Review

Thomas G. Field Jr.
Professor Emeritus, University of New Hampshire School of Law

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Repository Citation

Thomas G. Field, Jr. *Book Review*, 3 RISK 273 (1992).

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Book Review

Erratum

The citation for this review is *3 RISK 259 (1992)* in most commercial databases.

IAIN HAY, MONEY, MEDICINE AND MALPRACTICE IN AMERICAN SOCIETY. (Praeger 1992) [244 pp.] Abbreviations, annotated list of personal communications, figures, glossary, index, full legal citations, notes, preface, references, tables. LC 91-38477, ISBN 0-674-13645-4. [Cloth \$49.95. P.O. Box 5007, Westwood CT 06881-9990.]

In 1986, New Hampshire enacted a \$875,000 statutory cap on pain and suffering in certain personal injury cases, but last year the state supreme court ruled it unconstitutional. More recently, the plaintiff who filed that challenge was awarded \$3 million by a local jury. One defendant, nearing retirement, finds his malpractice insurance inadequate and fears financial ruin. Other physicians, recognizing the need for compensation in such cases, are nevertheless frightened. Moreover, they note that insurance, which rose 18% as of July 1, and the costs of more diagnostic tests will be passed on to all of us.¹ Every year, this situation is echoed across the country, and even though awards of that size are uncommon, physicians respond similarly.

Those interested in the topic will find *MONEY, MEDICINE AND MALPRACTICE* to offer an interesting and relatively broad perspective. Hay, a Lecturer in Geography at the Flinders University of South Australia, appears to be neither, e.g., doctor, lawyer nor “American” (a term offensive to those living south of the Rio Grande). Yet, the book gains depth from his earlier work in writing *THE CARING COMMODITY: THE PROVISION OF HEALTH CARE IN NEW ZEALAND* (1989).

Hay begins with the observation that:²

The “American Way” is incompatible with the U.S. experience of post-World War II capitalism. National and individual self-determination are collapsing in the face of profit-seeking, social compulsions, and the imperative of global economic competition. Only the illusion of free choice and the misguided rhetoric of individualism remain: they mask new realities of compulsion and collectivism. This cultural contradiction is explored through an investigation of

¹ Richard Stradling, *Malpractice suit award worries doctors: Man who lost penis given \$3 million*, *Concord Monitor*, Sept. 5, 1992, at 1.

² *Preface*, at xxi.

the development of medical liability insurance and its implications for tort reform and health care provision in the United States.

Only his treatment of reinsurance — particularly as influenced by Lloyd's of London and other foreign insurance organizations — is missing from that summary.³ Hay says that his book can be viewed as examining: (1) “trans-formations in medicine, law, and society that brought about and sustained the growing need for, and importance of, medical liability insurance...,” (2) “some of the consequences for the U.S. malpractice market of physicians’ dependence on insurance in the new global context of communications, proximity, capital mobility, and economy,” and (3) consequences, namely physicians’ loss of professional control and patients’ potential loss of legal recourse.⁴ Also, it follows a two part chronological division between the evolution of malpractice during a period of wealth and changes induced by “conditions of growing financial stringency.”⁵

In the first chapter, Hay reports that, unlike the situation in the U.S. or the one emerging in the U.K., a no-fault system in New Zealand and a similar scheme in Sweden are fairly popular.⁶ Yet, perhaps because he is an outsider, he fails to weave this into his conclusions. Thus, we are left to wonder whether the U.S. might be better off with such a system — and, if so, why.⁷

Nevertheless, physicians, lawyers and others interested in malpractice should find this well-produced and extensively-documented account of the interactions of medicine, law and insurance to be of considerable interest.

Thomas G. Field, Jr.

³ See, e.g., *Reinsurance and Shifts in Influence*, Chapter 7.

⁴ *Preface* at xxiii-xxxiv.

⁵ *Id.* at xxxiv.

⁶ At 13.

⁷ Along this line, see, e.g., STEPHEN D. SUGARMAN, *DOING AWAY WITH PERSONAL INJURY LAW* (1989) — reviewed in 1 RISK 277 (1990).