Fear of litigation is like a horror film. After a disturbed graduate student threatened to burn down the home of a faculty member in my department, we called a mentor at the student’s prior university and asked why no related information was passed on to us. She said the student threatened to sue them if they said anything negative to anyone. When we terminated the student, we found ourselves in the same situation. Our attorneys and hers agreed that we would not speak of the problems. No actual litigation occurred in either instance, but the fear of litigation drove us to this outcome. It is the fear of litigation that drives many practicing psychologists to make bad decisions (Brodsky & Cramer, 2008; Brodsky & Schumacher, 1990). A new book by David Shapiro and Steven Smith offers a sound foundation for practitioners to be prepared for the possibility of litigation and to make informed decisions if it occurs.

The first two chapters in Malpractice in Psychology: A Practical Resource for Clinicians present the basics in tort liability. They address the essential issues of duty, breach of duty, causation, and injury. Clear and useful definitions are offered for negligence, strict liability, and vicarious liability. The next four chapters address essential issues in professional practice: consent and abandonment in professional relationships; confidentiality and privilege; negligent diagnosis and treatment; and liability from suicide, violence, and threats of violence. The book wraps up with three chapters on other areas of liability, including sexual misconduct and defamation, the trial process and settlements, and how to avoid negligence and malpractice claims. There is a very nice teaching tool in this book: Every chapter concludes with a page or two of practical suggestions that capture the essence of what the ethical and responsible practitioner should know and do.

Shapiro and Smith do weave legal cases into their discussion of negligence and claims. One case is presented in which a drug-induced man in an emergency room mumbled about wanting to kill his mother. He never made any actual threats, and there was no hospital follow-up. When he accidently killed his mother 18 months later, the mother’s estate successfully sued the hospital, the jury concluding that there was a therapy relationship and that the hospital should have warned the mother of what he said while in the emergency room. This kind of case in which an unremarkable event leads to litigation is scary for mental health professionals.

I liked the discussion of abandonment by therapists who end a therapy relationship without ensuring continuity of care. Although therapists rarely just “dump the client” when not much progress is made or when there is a personal difficulty working with the client, this discussion grabs and shakes readers in emphasizing responsible means of ending therapy.
The chapter on confidentiality and privilege probably has the most material already known to likely readers of this book. It discusses the Health Insurance Portability and Accountability Act, the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct, and exceptions to and breaches of confidentiality. On the other hand, the subsequent chapter on negligent diagnosis and treatment has much content that will likely be new to most psychologists. Negligent diagnosis is defined as deviation from accepted standards that causes harm. Shapiro and Smith’s cautions are compelling about genuinely having enough information to make a diagnosis and about liability from using problematic assessment measures (or accepted measures in a problematic manner). The same issues reach broadly into employment and educational testing as well.

Therapists whose clients commit suicide are often fearful of being sued. Indeed, when one new client of mine killed herself, I worried about a lawsuit, once I had dealt with the practical and emotional issues that presented themselves. Yet, the authors report that only 4 percent of malpractice actions against psychologists are related to suicide. A brief but informative review of suicide risk assessment protocols is presented. The duty to protect is discussed in the context of Tarasoff-like rulings. At one time there was a flood of concern about Tarasoff and duties to warn and protect. In this chapter, a modest updating of Tarasoff rulings is presented, including the inconclusive duty to warn or protect when therapy clients are HIV positive and also sexually active.

Not much is presented about sexual misconduct with clients. The authors write, "This could be the shortest section of the book: Sexual contact with clients is malpractice. It is unethical, and every psychologist knows this, and it creates clear liability” (p. 119).

The remainder of the book addresses other areas of possible liability, as well as addressing what happens and doesn’t happen as litigation moves toward trial. The book concludes with 25 “top ways” to avoid negligence and malpractice claims. Most suggestions are obvious. A few bear repeating: Never engage in phantom supervision. With troublesome clients, document absolutely everything thoroughly. Be flexible and open with client concerns. Consider apologizing when an error of yours has caused injury. Have annual check-ups with an attorney as part of a risk-reduction program.

Overall, this short book—164 pages of text—presents a responsible and careful description of areas of liability among professional psychologists. The book may be most valuable for practitioners with a fear of litigation and for individuals who need a wake-up call to be more responsible, thorough, and preventive in their therapy practices.

References
