
MYTHS & MISCONCEPTIONS: THE TREATING VS. THE FORENSIC ROLE

Myth: I can effectively provide treatment and forensic services to the same person.

Truth: Acting as both a treater and expert witness, or performing an evaluation for legal purposes, could adversely affect the therapeutic relationship and your objectivity as an expert.

These are two common scenarios in which psychiatrists find themselves:

A psychiatrist has been treating a woman, diagnosed with bipolar disorder, for three years. The patient and her husband are separated and have joint custody of their young son. The patient tells the psychiatrist that her estranged husband provides very little monetary support for the child and goes out of his way to make her life miserable. The psychiatrist thinks the patient is trying very hard to provide a good home for her child, but that sometimes she is barely holding things together. Now, the father wants sole custody, saying the mother is “unstable.” The father has retained a very well-known attorney from a large and influential law firm to represent him. The patient’s attorney has contacted the psychiatrist and asked her to write a report and provide oral testimony at a custody hearing in support of the patient/mother retaining custody of the child. The patient tells the psychiatrist that she cannot afford to pay for an independent medical expert and, “besides, you know better than anyone that it is best for my child to live with me.”

A patient is receiving disability insurance through his employer as a result of an injury at work. The patient started psychiatric treatment about a year after the injury. The psychiatrist and the patient have been working on many issues, including issues related to the injury. Now, the patient is involved in a dispute with the insurance company because the disability payments are being discontinued. He has consulted an attorney about filing a lawsuit against the insurance company. If the patient loses the disability payments, it is unlikely that he will continue in treatment with the psychiatrist because of the cost. Previously, the psychiatrist provided limited information (with the consent of the patient) to the disability insurance company about the patient’s current and previous diagnoses and about the recommended treatment plan. Now, the patient and his attorney have requested that the psychiatrist write a letter to the disability insurance company stating that the patient’s current psychiatric problems were caused by the injury that he sustained at work.

In these scenarios, the psychiatrists are clearly acting in the role of "treating psychiatrist"; however, once they start giving opinions for the purposes of employment or litigation, they have moved beyond the scope of "treating psychiatrist" and into the role of "forensic psychiatrist," or even "expert witness." Multiple roles bring with them the very real possibility, even the inevitability, of conflicting obligations (i.e., the patient's clinical needs versus the patient's other needs). Conflicting obligations increase the risk of clinical, ethical and even legal problems. The American Academy of Psychiatry & the Law states in *Ethical Guidelines for the Practice of Forensic Psychiatry*, "[t]reating psychiatrists should generally avoid agreeing to be an expert witness or to perform evaluations of their patients for legal purposes because a forensic evaluation usually requires that other people be evaluated and testimony may adversely affect the therapeutic relationship."

The psychiatrist in each of these situations should be justifiably concerned about being drawn into litigation as an expert witness. With proper authorization from the patient, it may be appropriate for the psychiatrist, as the treater, to provide factual information in a report or testimony about the patient's clinical status. However, if the psychiatrist's assessments, recommendations, and opinions do not exactly match the litigation needs of the patient/party as the lawsuit develops, then the psychiatrist's usefulness as a witness is finished. At that point, she could even be detrimental to the patient's case, which could have serious implications for the therapeutic relationship. If, on the other hand, the psychiatrist tailors her assessments, recommendations, and opinions to the needs of the lawsuit, then her effectiveness as a treating psychiatrist is seriously compromised, if not destroyed, and she may even be falling below the standard of care. In either situation, if the patient thinks he has been harmed by the doctor's involvement, the patient may then have a cause of action against the psychiatrist based in negligence (i.e., negligent treatment or negligent forensic evaluation).

Risk Management Advice:

Psychiatrists should be wary when asked for opinions or predictions by third-parties, such as patients' employers, disability insurance companies, and attorneys. The safest response is for the psychiatrist to discuss the issue with the patient, explaining the limits of her role as a treating psychiatrist and outlining the potential conflicts. She can advise the requesting parties that if they want an opinion or a prediction, then they should obtain an independent medical exam for that specific purpose.

Psychiatrists who practice in small towns or rural areas sometimes find that it is difficult to avoid dual roles; however, they should still make every effort to do so.

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