

# Example of irreconcilable conflict between therapeutic and forensic roles argumen...

[Law](#), [Criminal Justice](#)



## **Introduction**

At times, attorneys ask therapists to provide information that they obtain from their patients as expert witness testimony in a number of their therapy patients litigations. The therapists include psychologists and other professionals in mental health. As a result, they end up providing inaccurate information in the court. Research has found that most attorneys do not understand the difference between forensic and therapeutic roles. Although the two parties may be dealing with the same patient/examinee, this does not justify a therapist providing both services to the same patient-litigant (Greenberg & Shuman, 2007, p. 130) . Their roles are distinct based on different professional elements. Attorneys as well as court systems should not allow therapists to provide information in courts unless it lies entirely on their area of expertise.

## **Factors that bring about the conflict between therapeutic and forensic roles**

One of the aspects that cause the conflict between therapeutic and forensic roles is the degree of scrutiny. In both roles, the parties involved obtain information from the examinee(s), which is essential for their ability to accomplish their tasks. However, the information gathered by a therapist can be somewhat unreliable for legal use because therapists obtain their information primarily from the patient. Since patients are interested in their wellbeing, they may choose to give false information about the cause of their impairments. This renders the information obtained by therapists incomplete and sometimes biased with little or no credibility. On the other hand, forensic

evaluators not only get information from the patient in question but also collateral sources such as employers, physicians as well as close relatives. They employ a more systematic manner in collection of the examinee's information. Owing to this, forensic evaluators are not only able to validate the information provided by the examinee but also disconfirm most of the false information that the examinee may have provided enabling them to make judgment about the examinees reliability.

Therapists and forensic evaluators undergo different training programs causing their difference in expertise. Therapists are equipped with knowledge on different therapeutic techniques and the different ways of manifestation of psychological disorders. Therapists are only familiar with the literature that enables them to offer diagnosis and treatment to the patient. On the other hand, forensic experts have vast knowledge on the basic law as it applies in a given case or rather impairment. Based on the training of therapists, Covell and Wheeler argue that therapeutic experts do not know that the rules of the procedure, standard of proof and evidence in the courtroom are different from those in the clinical practice (2006, p. 7). It is thus evident that the role of therapeutic experts is limited to the provision of care to the individual in question whereas forensic experts' role lies squarely in the courtroom.

Therapists and forensic evaluators portray different relationships with the patient-litigant. A therapist seeks to be empathic to the patient in an attempt to create a friendly environment. This approach makes the patient to feel safe thus free to discuss their feelings as well as their thoughts without the

fear of any judgment or criticism from the therapist. Some people argue that the approach that the therapists employ in getting information from the patient may be biased which prevent some patients from disclosing all the necessary information since they tend to seek sympathy from the therapists (Heltzel, 2007, p. 124). For instance, a girl may claim that her father raped her while her paternal uncle might have raped her. On the other hand, forensic experts maintain impartiality and convey a dispassionate attitude while tackling the examinees difficult experiences that form part of the litigations. They seek to obtain information that is relevant to the specific psycho legal issues in question. Following the difference in their attitudes, it is evident that the information obtained by the forensic evaluators is more reliable in the courtroom than that obtained from the therapeutic experts.

A crucial aspect that brings about the conflict between the roles of therapeutic and forensic experts is their difference in goals for their examinations on the patient-litigant. They gather information for different purposes. The information gathered by the therapists enable them to determine and initiate proper treatment of the patient since they only seek to improve or rather restore the patients emotional wellbeing. This disqualifies the use of the therapists' information to form an opinion about a legal issue. The sole objective of forensic evaluation is to provide information to the court, which is instrumental in making the court's final decision on the legal issue in question. Heltzel argues that the relationship between the forensic examiner and the examinee does not seek to be helpful to the examinee as in the case of the therapist (2007, p. 125). It is mandatory for a

forensic examiner to provide neutral, honest and independent information to the legal bodies. This allows the forensic evaluator to examine the examinee's credibility thus providing an honest and reliable assessment his/her personality.

Another factor that disqualifies the ability of a therapeutic expert to assume forensic expert roles is that they test different hypothesis in their field of expertise. A therapist tests rival diagnostic hypothesis to ascertain the form of therapeutic intervention suitable to enhance the well-being of the individual under investigation. Examples of therapeutic interventions are psychotherapy and psychopharmacologic interventions. On the other hand, a forensic evaluator employs his/her expertise to test a different set of psycho legal hypothesis. According to Covell and Wheeler, the law generates the elements of the hypothesis that the forensic expert tests which are usually in line with the case in question (2006, p. 8). Owing to this, the therapeutic expert cannot tailor his/her information to meet the psycho legal aspects of a given patient-litigant in a courtroom.

Therapeutic experts should not involve themselves in the legal issues of the patient-litigant in order to prevent threatening the relationship between the two that is crucial in enhancing his/her well-being. Some people believe that any disturbance to the therapeutic alliance is potentially harmful to the health of the patient-litigant, which is a violation of professional rights (Greenberg & Shuman, 1997, p. 56). In contrast, the role of the forensic expert is to assess, judge and report his/her findings to a third party such as an attorney or judge who proceeds with the legal issues of the individual in

question. The findings of a forensic expert may be detrimental to the examinee's legal position but it may have little or no impact on the well-being of the patient-litigant. According to Greenberg and Gould (2001), since the forensic expert is not involved in a helping relationship with the patient-litigant, his/her judgment will have little or no impact on the health of the patient (p. 472). This stands out as one of the reasons why a therapist should not assume the role of a forensic expert in a courtroom.

### **Circumstances under which a therapist can provide testimony in courtrooms**

Attorneys can ask therapists to testify in courtrooms only when no one can provide the information that the court needs to reach the final decision of a given legal issue. In such cases, psychologists as well as psychiatrists usually qualify to testify in courtrooms as medical experts because of the specialized knowledge that they possess. However, this can only happen when the court orders the therapists to appear in the courtroom. They should properly testify to therapeutic facts, observations as well as clinical opinions. The testimony may comprise of issues such as the medical history provided by the patient-litigant, his/her behavior at given times and the clinical diagnosis. Additionally, the therapist can also provide the patient's specific type of treatment as well as his/her response to treatment. When requested to testify in a courtroom, a therapeutic expert may cause a role conflict if he/she attempts to testify as a forensic expert in addressing psycho legal matters (Strasburger, Gutheil, & Brodsky, 1997, p. 450). Such matters include the probable cause of an accident or injury. The information provided by the therapist is usually inadequate to act as the basis of determining the

psycho legal cause of the litigant's impairment thus should only provide support to the forensic experts' information.

## **Conclusion**

Attorneys and court systems should not allow therapeutic experts to assume the role of forensic experts. Following the above discussion, several factors bring about the irreconcilable conflict between therapeutic and forensic roles. These factors include difference in professional attitude, the degree of scrutiny when gathering information from patient-litigants, difference in goals, expertise difference as well as the difference of the hypothesis that the experts seek to ascertain. The information collected by therapists is unreliable as far as psycho legal issues are concerned. Therapists should only appear in courtrooms to testify as treating experts based on their knowledge of clinical literature. In assuming forensic roles, therapeutic experts violate professional standards.

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