

# Rand v. Miller: Can Record Review Constitute a Doctor-Patient Relationship?

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In 1987, A.A.P.L. issued Ethical Guidelines for the Practice of Forensic Psychiatry. These were revised in 1989 and again in 1991 (1). One of the most generally held concepts is the need to examine an individual, if at all possible, prior to rendering an opinion as to their psychiatric condition, if any. This stems from the controversial "Goldwater Rule" issued by the A.P.A. (2) Nonetheless, there are circumstances where physicians, psychiatrists and even forensic psychiatrists continue to, on a regular basis, issue written opinions without even the slightest of efforts to interview the individual in question.

Recently, in *Rand v. Miller*, the Supreme Court of West Virginia shared with us its opinion on this pressing issue (3). It is one of a series of cases on which I have reported which deal with the relationship between a forensic psychiatrist and an evaluatee (4). Clearly, the *Miller* case continues the trend of decisions affirming the lack of a doctor patient relationship in a forensic setting.

## The Case:

In November, 1987, the plaintiff applied for a position with the United States Postal Service. She had previously worked for the Postal Service and as such was eligible for reinstatement. After her interview she was told that she would get the job pending medical evaluation. Her own physician, Dr. Stearns, completed the form. On it, she indicated that the plaintiff had suffered a back injury in a motor vehicle accident in 1984 but concluded that the plaintiff was healthy and with no restrictions of activity.

The Postal Service forwarded the completed form to the defendant, Dr. Miller, a physician with whom the Postal Service had contracted to screen employee applicants. On December 7, 1987, Dr. Miller dictated a two sentence report stating that although Dr. Stearns found no disability resulting from the accident, "after reviewing the past medical history, a personality disorder is detected." This report was made part of the plaintiff's employment application and personnel file. She became aware of this about December 30, 1987. On February 3, 1988 she was advised that following review of her personnel file she was not being hired.

On February 22, 1989, plaintiff initiated action against Dr. Miller for defamation and medical malpractice. The circuit court barred the defamation claim as it was filed too late and trial commenced February 7, 1990, on the malpractice claim. By special interrogatory, the jury awarded the plaintiff an amount of \$665,000.00. The circuit court subsequently denied defense motions for a new trial and for judgment notwithstanding the verdict.

On appeal to the State Supreme Court Dr. Miller contends the trial court erred in allowing the case to go to jury on the issue of malpractice. She contends that there was no doctor-patient relationship which would give rise to a duty of care to be breached.

#### The Verdict:

The Supreme Court reversed the lower court's decision noting: 1) A physician who undertakes to evaluate prospective employee's medical records for employer lacks sufficient professional relationship with employee to support malpractice action, though if physician reports false information, defamation action may be brought, and 2) defamation claim was barred by limitations (3).

#### Discussion:

The court cites two major decisions in its decision. The first, Ervin v American Guardian Life Assurance (5) found "A physician who is retained by a third party to conduct an examination of another person and report the results to the third party does not enter into a physician-patient relationship with the examinee and is not liable to the examinee for any losses he suffers as a result of the conclusions the physical reaches or reports. The second, Keene v. Wiggins (6) states "Where no physician-patient relationship exists the doctor's only duty is to conduct the examination in a manner not to cause harm to the person being examined."

Interestingly, the court notes that there was evidence that the adverse report was the result of several heated telephone conversations between the plaintiff and Dr. Miller and her secretary regarding the delay in processing the plaintiff's evaluation. The plaintiff contends that Dr. Miller intentionally and falsely labeled the plaintiff as having a mental condition is in the nature of defamation.

The court did recognize that a defamation action may be maintained against a physician who makes a false report of a prospective employee's health, thereby causing the prospective employer to fire or not to hire the person examined (7).

The final outcome of the case is as expected with the "forensic" psychiatrist being protected under the law. However, this was a hard-fought battle for Dr. Miller and a \$6665,000.00 judgment hung over her head for more then a year before she was vindicated. In addition, the fact that the court accepted as plausible that the report issued may have been influenced by the unfriendly interactions between the parties is a serious issue.

We are ethically bound to maintain our conduct and to uphold the codes as established by the medical profession and by our organizations and societies. We have a need to "police" ourselves; if not, other bodies will too readily assume that responsibility. A two sentence report seems unusually short and yet, I am sure we all see reports cross our desks which is of questionable quality. This case clearly should encourage the use of trained and experienced forensic evaluators.

The court leaves open the action for defamation. In the case at hand it was barred by a one-year statute of limitation. Clearly, our work is at times adversarial in nature. By leaving this issue open and with the notations of the court above, we are all being reminded that we will be held accountable for our behavior and demeanor. Furthermore, it speaks to the transference that develops in a forensic evaluation, even in one where the plaintiff was never personally seen. If we are to uphold the tenets of the A.A.P.L. code, to strive for impartiality, we must be well aware of our transference issues, especially in the forensic arena.

References:

1. Ethical Guidelines for the Practice of Forensic Psychiatry, A.A.P.L. Membership Directory, 1992, xi-xiv
2. Opinions of the Ethics Committee on the Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry, American Psychiatric Association, 1989
3. Rand v. Miller 408 S.E.2d 655
4. American Academy of Psychiatry and the Law Newsletter, 15:3, 88-89, 1991; 16:2, 40, 1991.
5. 545 A.2d 354
6. 69 Cal. App. 3d 308, 10 A.L.R. 3d 1071
7. Felton v. Schaeffer 229 Cal.App.3d 229, 279 Cal.Rptr. 713