



Psychiatry & Behavioral Science – 2019

I2 The Hearsay Rule: An Adversary to the Mental Health Field—Which Field Is Next?

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Learning Overview: After attending this presentation, attendees will understand: (1) how a recent California case impacts the admissibility of hearsay material relied on by expert witnesses, (2) how the case is restricting an expert's ability to use collateral material informing their opinion when testifying in involuntary civil commitment cases, and (3) how such restrictions may hinder mental health treatment and, ultimately, the patient.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by raising awareness of how an expert's use of collateral sources has been generalized and applied beyond that of the original landmark case.

In the 2016 case, *People v. Sanchez*, the defendant was convicted of multiple criminal felonies with gang enhancements after a gang expert witness opined that the defendant was likely a member of the Delhi gang.¹ The expert did not interview the defendant and based his opinions on collateral information. The defendant contended the expert's testimony on grounds of hearsay, which inspired the California Supreme Court to revisit the proper use of the hearsay rule. The Court ruled that "when any expert relates to the jury case-specific out-of-court statements and treats the contents of those statements as true and accurate to support the expert's opinion, the statements are hearsay." Consequently, the Court reversed the defendant's gang enhancement charges.

According to California Evidence Code § 1200, (The Hearsay Rule), "hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Except as provided by law, hearsay evidence is inadmissible." Prior to the *Sanchez* ruling, California courts generally allowed experts to testify using hearsay statements on the basis that they were used to assist the expert in forming an opinion and not to be used as true facts by the trier-of-fact. Post-*Sanchez*, many courts are no longer permitting testifying experts to use hearsay information. This includes mental health experts, who because of this ruling, are prohibited from using data obtained from a patient's treatment team or family members when testifying at civil commitment writ or conservatorship hearings.

Mental health providers have the unique challenge of treating patients who are frequently unable or unwilling to provide necessary information due to symptoms of their mental illness. It is common practice for mental health experts to rely on statements from a patient's family members regarding the patient's medical history, observed symptoms, and changes in functional status. Collateral information from family members is often a crucial aspect of clarifying a patient's diagnosis, as well as vital to constructing an appropriate disposition plan for the patient; particularly when the patient has been reliant on family members for housing and financial support. The absence of such vital information could be markedly detrimental to the mental health expert's testimony and risks depriving the trier-of-fact from gaining a thorough understanding of the issue being addressed.

Frequently, mental health experts rely on relevant third-party information, in addition to direct patient assessment, as a basis for forming clinical opinions. Barring such information during expert testimony may limit the expert's ability to sufficiently prove the need for continued involuntary hospitalization or conservatorship.

Other challenges include the feasibility of requiring multiple witnesses to testify in court rather than allowing the expert witness to present statements on their behalf. The financial consequences of having each witness with relevant information (including, but not limited to, multiple health care providers, law enforcement officers, and patients' family members) taking time away from their duties to testify in court may not be reasonable. There is also the risk of potential witnesses, such as family members and treatment providers, damaging their relationship with a patient when testifying about them in court. A case example that illustrates some of the repercussions of the *Sanchez* ruling's application to the mental health field will be presented. A discussion regarding how this ruling could eventually impact other fields of expertise will also be addressed.

Reference(s):

¹. *People v. Sanchez*, 63 Cal.4th 665 (2016).

Hearsay, Mental Health, Expert Witness