




Forensic Healthcare Online


Discussion Points:

- Aspects of defensible practice
- Foundations of nursing practice
- Reading and understanding research
- Testimony
- Defense testimony
- Expert intimidation

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Why this workshop?


- Testimony is often the most dreaded part of a forensic nurse's practice, primarily because of the unknown of cross-examination.
- However, it is possible to prepare for testimony in many ways; doesn't have to be a complete mystery.

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What is a defensible practice?


One that is supported by clinical experience, current research, and accepted practice standards.



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Two key questions:

- How do you know what you know?
- Why do you do what you do?

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Know the standards

- Know the practice standards, protocols and guidelines that inform your practice.
- Be familiar with your state nurse practice act and how your own practice falls within its bounds.

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Own the full patient encounter

- The medical-forensic exam begins at triage and ends when the patient is discharged.
- Picking and choosing the aspects of the patient encounter you want to be involved with may leave you vulnerable.

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Don't practice in a vacuum

- A quality assurance process that involves another trained individual reviewing all of your charts and photos with identified benchmarks is critical.
 - How else do you know you're performing the role competently?

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Embrace evaluation

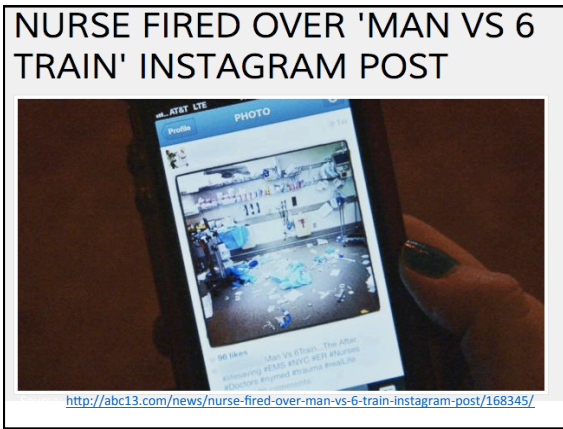
- ANA: professional nursing practice includes evaluation.
- Forensic nurses should be evaluated annually, *specifically in that role.*

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Belong to your organization

- Consider which organization sets the standards for practice and guidelines for education in your field.
- This is where you will get the biggest return on your investment.






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"Yes, not every black person is going to shoot me because I look at them wrong, or because I happen to be attending a training so I'm wearing a [redacted] shirt that day — but I know that there is a stronger chance that they will today than they would have 5 years ago," [redacted]'s Facebook post stated




A graphic with a yellow background. On the left, the text reads 'What are some good rules for social media use as a forensic nurse?'. On the right, the text reads 'the INTERNET DOESN'T forget' in a stylized font where 'INTERNET' is in large blue block letters and 'DOESN'T forget' is in red script. Below the graphic, it says 'Illustration: Chris Piascik'.



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Reading and Understanding Research


- How comfortable are you interpreting a research article?
- How comfortable are you determining applicability of article content to a specific case?
- How comfortable are you interpreting the overall research underlying the basis of our opinions?

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Critically Reading Research

- What is a research article?
 - “A paper written by authors who either collected and analyzed their own data (primary data analysis), or analyzed data that had been collected by someone else (secondary data analysis).”

Rachel Dunifon Ph.D., (2005) How to Read a Research Article, Cornell University Cooperative Extension

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How is research generally presented?

- Abstract
- Introduction
- Methods
- Results
- Discussion
- Implications for policy and practice
- Conclusion
- References

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Peer Reviewed Journal vs. Research Brief vs. Web

Rachel Danifon Ph.D., (2005) How to Read a Research Article, Cornell University Cooperative Extension

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A ROUGH GUIDE TO SPOTTING • BAD SCIENCE •


<p>1. SENSATIONALISED HEADLINES</p> <p>Ⓜ</p> <p>Headlines that use words like "miraculous" or "breakthrough" to describe a study that is only preliminary or has not been replicated.</p>	<p>7. UNREPRESENTATIVE SAMPLES</p> <p>👤</p> <p>Studies that use a small, unrepresentative sample of people to draw conclusions about a larger population.</p>
<p>2. MISINTERPRETED RESULTS</p> <p>✖</p> <p>Headlines that claim a study has found a "cause" when it only shows a correlation.</p>	<p>8. NO CONTROL GROUP USED</p> <p>👤</p> <p>Studies that do not include a control group to compare the results against.</p>
<p>3. CONFLICT OF INTERESTS</p> <p>ⓧ</p> <p>Studies where the researchers have a financial or other interest in the outcome of the research.</p>	<p>9. NO BLIND TESTING USED</p> <p>👁</p> <p>Studies where the researchers know which group is receiving the treatment, which can bias the results.</p>
<p>4. CORRELATION & CAUSATION</p> <p>📊</p> <p>Headlines that claim a study has found a "cause" when it only shows a correlation.</p>	<p>10. CHERRY-PICKED RESULTS</p> <p>📊</p> <p>Studies that only report the results that support their hypothesis, ignoring the rest.</p>
<p>5. SPECULATIVE LANGUAGE</p> <p>🗨</p> <p>Headlines that use words like "may" or "could" to describe a study that has not been replicated.</p>	<p>11. UNREPLICABLE RESULTS</p> <p>🔄</p> <p>Studies that cannot be repeated by other researchers, which is a key part of the scientific process.</p>
<p>6. SAMPLE SIZE TOO SMALL</p> <p>👤</p> <p>Studies that use a small sample size, which can lead to unreliable results.</p>	<p>12. JOURNALS & CITATIONS</p> <p>📖</p> <p>Studies that do not cite their sources or use low-quality journals.</p>

Source: <https://www.compoundinterest.com/2014/04/02/a-rough-guide-to-spotting-bad-science/>

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Knowledge of literature

- You do not need to know every article or book written in this field.
- You **should know and be familiar with** the well-known articles that are foundation of your training and opinions.


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Testifying to Research

- What happens if you are confronted with research on the stand?
 - When it's from an article you have read?
 - When it's from an unfamiliar source?


Preparing To Be an Effective Witness



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Testimony


- Testimony is where defensible practice is tested.
- What have you done to make sure you are prepared to provide the most effective and ethical testimony?

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1.) Maintain Currency

What do you do to make sure your knowledge base is as current as possible?


- Peer-reviewed journals (e.g. JFN)
- Continuing education (www.forensichealth.com)
- Networking with colleagues
- Peer review/QA/QI
- Routine clinical practice

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2.) Analyze scientific sources

What are the scientific sources you use and are they:

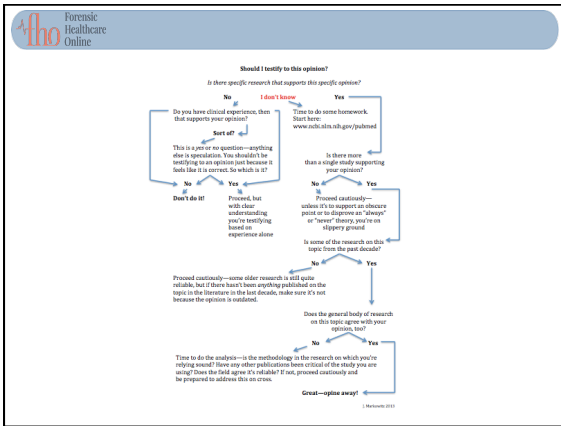
- Current with the state of the science?
- Scientifically sound?
- Generally accepted as reliable among the profession (e.g. adequate sample size; reproducible results)?

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3.) Know your limits

Know your limits and consider how they will impact your testimony:

- Think about what you can comfortably say and what you may not be comfortable saying (and convey that on prep with the subpoenaing attorney).
- Can you back up your opinions with the science and/or your clinical experience?




4.) Testify truthfully/accurately

- Acknowledge errors in your record or gaps in your knowledge.
 - Do not make things up; "I don't know" is an acceptable sentence.
- Refrain from speculation.
- Don't allow anyone to pressure you into providing testimony you don't agree with or are uncomfortable with.

5.) Professionalism!


- The less professional you appear, the less weight jurors will give your testimony.
 - Consider appearance, body language, and choice of words.
 - Show up prepared.
- Professionalism extends beyond the courtroom.

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6.) Know Your Foundations


Testimony is not just about the medical-forensic exam. Prepare to discuss:

- Education, regulation and policy that supports your practice.
- Any national, state and local protocols that impact practice
- Agency policy and procedure.

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7.) Know Your Terms

- Medical Terms (including injury descriptors)
- Scientific/practice terms (e.g. evidence-based practice)

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8.) Remember: Testimony is forever

- Prior testimony can be used to impeach you on the stand.
- Do not take the experience lightly—practice and prepare
- Do the after-action review so you learn from the experience

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Your job?

Teaching the judge or jury members.

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What constitutes good testimony technique?

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Testimony issues

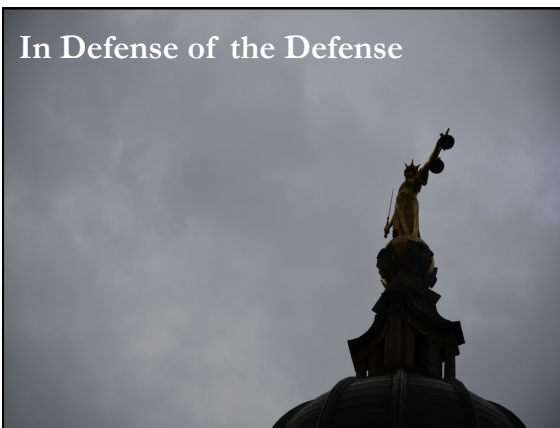
Problem areas:


- Inability to define basic terms.
- Inability to articulate clinical decision-making.
- Straying from science or experience.
 - If you're giving an opinion, it must be supported by current and credible research OR by sufficient clinical experience.

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Pretrial checklist

- Identify elements of your professional education and experience that should be highlighted for the jury and convey this information to the attorney during pretrial prep.
- Review the case file and know it well enough to have the general details of the case memorized.
- Identify the research that supports any opinions you anticipate giving on the stand; if there is opposing research on your opinions, know that, too.
- Identify any lapses in protocol, policy and procedure and be prepared to explain why if there are.



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Testifying for the defense

The role of the SANE is not that of prosecution witness.

- While that is often what we are asked to do when we go to court, there is no reason to shun defense work.

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Testifying for the defense

- “It may be helpful for attorneys calling them (both prosecutors and defense attorneys) to first develop relationships with coordinators of examiner programs, if they exist, or staff that oversee examiners at the exam site.”
- “Although it is most likely that examiners will be called by the prosecution, they may also be called by the defense.”

(National Protocol for Sexual Assault Medical Forensic Exams)

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Testifying for the defense

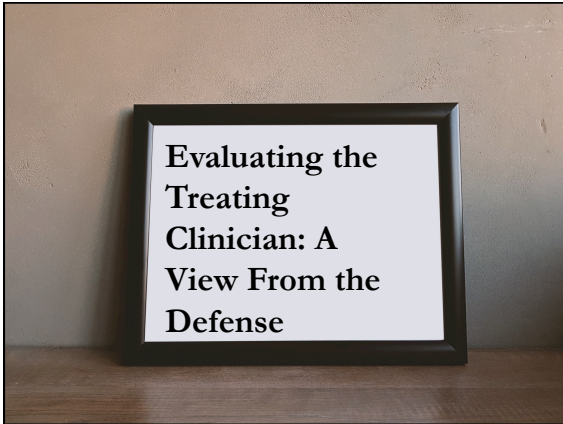
- A blanket rule of refusing to provide defense testimony, or ostracizing nurses who provide defense testimony ultimately weakens the entire response.
 - Nurses’ objectivity can be called into question.
 - SANE testimony goes largely unchecked.
- Understanding the approach of each side can enhance a nurse’s testimony skill set.


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Testifying for the Defense

The first question you must consider when deciding to do defense work: can I ethically/ scientifically/experientially give them what they want me to provide?


- Sometimes the answer will be no.



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Adversarial System


- Foreign concept to nurses
- People tend to see defense experts as testifying *against* them

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Defense Counsel

In many cases, a savvy defense counsel will hire an expert to advise, assist with strategy, and/or provide testimony that may contradict (in part or all) of the treating clinician's anticipated testimony.


- Runs gamut from reasonable (wants to identify any weaknesses that exist in the case) to ethically questionable (wants *anything* that will torpedo the testimony of the treating clinician to include character and other personal attacks).

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Defense Experts


Also can run the gamut from reasonable to unethical (including inventing or misrepresenting science).

- Defense expert doesn't need to be seen as the enemy, even though the role is adversarial.
- Defense experts do an important job, including policing the profession, and helping to ensure that both sides have access to current science and professional standards.

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Evaluating the Treating Clinician

1. Did they do a good job?
2. What are their weaknesses (bias, knowledge of science and standards, qualifications)?
3. What are the weaknesses of their organization?
4. Is there any wiggle room (attacking the science or the diagnosis)?

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Did They Do A Good Job?


- Completeness of documentation
- Comprehensiveness of exam
- Adherence to recognized standards
- Adherence to agency policies and procedures
- Accuracy of documentation

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Did They Do A Good Job?

Here's where you discover just how important it is to have:

- QA/Peer Review/QI process
- Medical director who has a role that is more than figurehead
- Programmatic/personal commitment to continuing education
- Knowledge of foundational elements
- Regularly reviewed policies and procedures


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Pro Tip:
I should never be the 1st person to peer review your record as the expert in the case.

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Clinician Weaknesses?

- Education (formal, certificates, continuing)
- Certification
- Experience (not just years of forensic practice)
- Obvious biases (documentation, testimony, social media)
- Knowledge base

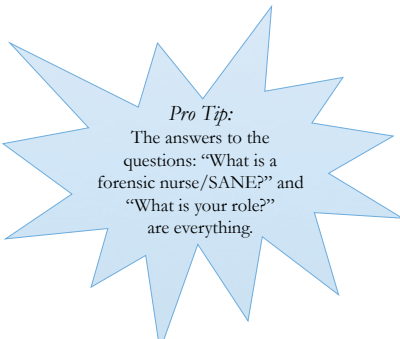
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Clinician Weaknesses

Here's where you discover just how important it is to have:

- Proper CV
- Knowledge of practice standards
- Self-awareness (limitations, view of yourself a *complete* nursing professional)
- Understanding of appropriate social media use
- Regular evaluation

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Pro Tip:
The answers to the questions: "What is a forensic nurse/SANE?" and "What is your role?" are everything.

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Evaluating the Treating Clinician

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Organizational Weaknesses

- Organizational philosophy
- Co-location
- Policies and procedures
- Eligible patients
- Mission statements and other written info

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Organizational Weaknesses

Here's where you discover just how important it is to have:


- Regularly reviewed policies and procedures that support practice and are consistent with standards
- A practice philosophy that reflects nursing practice
- Control over publicity materials

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"The Sexual Assault Nurse Examiner program has trained, certified nurses to collect forensic evidence for the police."


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Pro Tip:
Google your program, review written materials, and make sure they don't create the wrong impression.

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Evaluating the Treating Clinician

1. Did they do a good job?
2. What are their weaknesses (bias, knowledge of science and standards, qualifications)?
3. What are the weaknesses of their organization?
4. Is there any wiggle room (attacking the science or the diagnosis)?

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Wiggle Room?

- Interpretation of findings
- Explanation of science
- Diagnosis

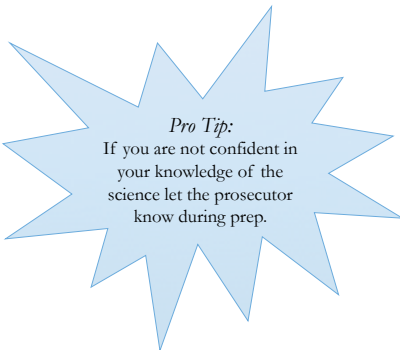
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Wiggle Room?

Here's where you discover just how important it is to have:

- Good grasp of the science (including gaps)
- Differential diagnosis

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Pro Tip:
If you are not confident in your knowledge of the science let the prosecutor know during prep.

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The Ethical Defense Expert

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How many people have ever received formal education on being an effective and ethical defense expert consultant and witness?

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“Expert ethical behavior should be judged by the standards of the discipline of the expert.”

Joseph Sanders, Expert Witness Ethics, 76 Fordham L. Rev. 1539 (2007).

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IAFN Vision of Ethical Practice

Obligation to Science:

- “Forensic nurses should seek to advance nursing and forensic science, understand the limits of their knowledge, and respect the truth. Forensic nurses should ensure that their research and scientific contributions are thorough, accurate and unbiased in design and presentation.”
- “Scientific misconduct, such as fabrication, falsification, slander, libel, and plagiarism are incompatible with this Vision of Ethical Practice.”

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IAFN Vision of Ethical Practice

Dedication to Colleagues:

- “Forensic nurses should treat colleagues with respect, share ideas honestly, and give credit for their contributions.”

<http://www.forensicnurses.org/?page=VisionEthicalPract>

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Takeaways

- An adversarial system doesn't have to be hostile system
- Cross exam doesn't need to be as much of a mystery as you think and prep is possible (and should be happening)
- You can be an effective defense expert and not be a complete _____




Opposing Expert Intimidation

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The Opposing Expert

- Easy to succumb to opposing expert intimidation.
 - Usually self-created
- Particularly when you are the treating clinician, defense may obtain an expert who has done this longer and has greater professional visibility (because of education, professional standing or both).


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The Opposing Expert

- Critical not to view your testimony in the context of any one else's anticipated testimony (remember: defense experts don't always testify).
- Regardless of *who* the expert may be, no one in that trial knows more about taking care of the patient in the case than you.


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In Summary

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The best testimony is...


- Plainly worded
- Simple
- Concise
- Peer reviewed

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Defensible practice

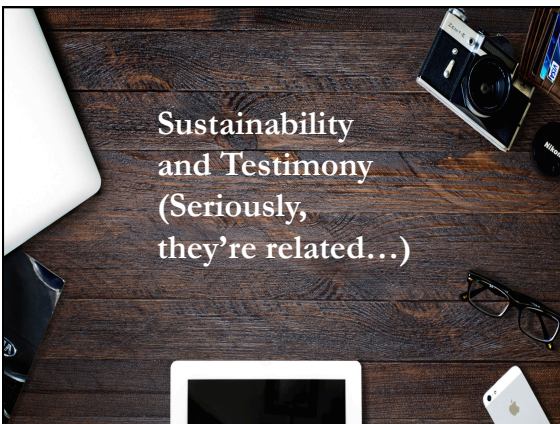
Is an articulation of the entirety of who you are as a nurse.


- What allows you to do this work.
- What guides your practice.
- How you know you are providing the standard of care.
- What forms the basis of your opinions.

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Testimony


- Testimony is the place where you discover just how defensible your practice is.
- It's also where you learn that the concept of defensible practice is not a static one.
 - As the science changes, so do we as clinicians.
 - As policies and protocols change, so do we as clinicians.



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Sustainability focuses on the ability of a SANE program to survive:

- Staff transitions
- Social, political, and economic challenges
- The impact of emerging issues and
- Scientific/medical breakthroughs that can affect team caseloads and resources

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What One Has To Do with the Other...

- A healthcare-focused program is a more sustainable program than one that sees itself as a criminal justice service.
- Opportunities for funding, methods for evaluation, and potential for collaboration all expand when a program is healthcare-focused and comprehensive in their philosophy of care.

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SANE Services *Are* Healthcare Services

When you frame *sexual assault* as a chief complaint and not just a criminal complaint (and you consider that in acute care services we treat per chief complaint), it enables your program to serve all sexual assault patients, not just those looking to the criminal justice system for help.

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SANE Services *Are* Healthcare Services

- Sexual assault patients should be receiving a higher standard of care from SANE programs, not (only) a higher standard of evidence collection.
- This means providing quality triage, specific healthcare interventions and targeted discharge planning appropriate to the individual patient

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SANE Services *Are* Healthcare Services

When SANEs no longer represent healthcare in this role, it is difficult to get healthcare institutions to support the work.

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SANE Programs Are Not a Hobby

- They are a professional nursing service.
- Like any other, they require policies and procedures, MOUs, contracts and other documents to support practice.
- Liability insurance is a must.
- Your first question should be: is my practice legal?

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Invest in Your People

- Greater investment in personnel will increase recruitment and retention, enhance clinical services and position people for potential expansion. Owning expensive equipment will do none of that.
- Investment in personnel will pay dividends on the stand, as clinicians can recount their ongoing education, and demonstrate their knowledge base.

