Acknowledgements

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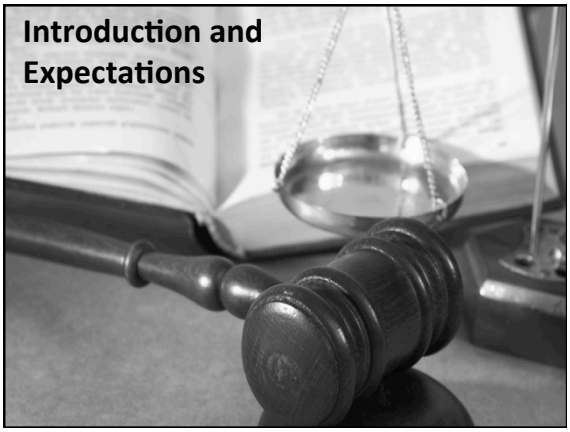
Handouts

www.forensichealth.com/conference-handouts



Discussion Points:

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

What is a defensible practice?

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

Two key questions:

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

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.

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.

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?

Embrace evaluation

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

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.

NURSE FIRED OVER 'MAN VS 6 TRAIN' INSTAGRAM POST

Source: http://abc13.com/news/nurse-fired-over-man-vs-6-train-instagram-post/168345/

"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

What are some good rules for social media use as a forensic nurse?

Illustration: Chris Piascik

Reading and Understanding Research

- 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?

Critically Reading Research

- What is a research article?
  - 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

How is research generally presented?

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-
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Source:

Peer Reviewed Journal

vs.

Research Brief

vs.

Web

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

Source: http://www.compoundchem.com/2014/04/02/a-rough-guide-to-spotting-bad-science/

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.

Testifying to Research

- What happens if you are confronted with research on the stand?
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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?

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

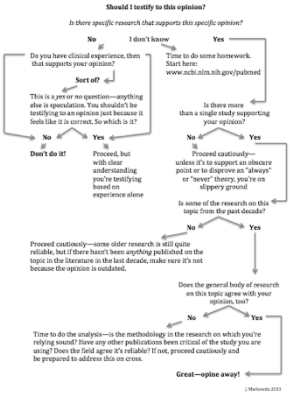
2.) Analyze scientific sources

- What are the scientific sources you use and are they:
  -
  -
  -

  profession (e.g. adequate sample size; reproducible results)?

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.
  -

    choice of words.
  - Show up prepared.
- Professionalism extends beyond the courtroom.

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.

7.) Know Your Terms

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

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

Your job

Teaching the judge or jury members.

What constitutes good testimony technique?

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.

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.

A Note About Billing

- People often ask if they can bill the prosecutors' office if they are providing expert testimony
  - YES: If you are testifying in a case in which you were not a treating clinician or associated with the patient in any way.
  - NO: if you were the treating clinician or associated with the patient in any way.
- Court time should be covered by the program.

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.

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)

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.

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?
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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).

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.

The Opposing Expert

- We need to help attorneys understand nursing is not a lesser included aspect of medicine:

Nursing has evolved into a profession with a distinct body of knowledge, university based education, specialized practice, standards of practice, a societal contract and an ethical code. The practice of nursing requires decision making and skill based upon principles of the biological, physical, behavioral and social sciences as well as evidence-based research related to functions such as identifying risk factors and providing specific interventions. Each state has a Board of Nursing that is the authorized state entity with the legal authority to regulate nursing practice. State legislature has set forth licensing and regulations for the nursing profession in their respective Nurse Practice Acts and Advanced Practice Nursing Acts. It is evident that under the nursing act, only a nurse would meet the qualifications for sitting for nursing licensure examination, and as such be eligible for licensure as a registered nurse.

Source: AALNC Position Statement, Providing Expert Nursing Testimony

IN SUMMARY

The best testimony is…

- Plainly worded
- Simple
- Concise
- Peer reviewed

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.

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.