


**Forensic Nursing
Application
of Criminal Trial
Testimony**



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Disclosure

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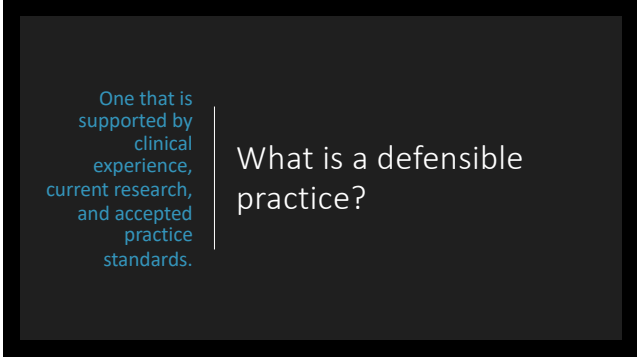


Introduction and Expectations



Discussion Points

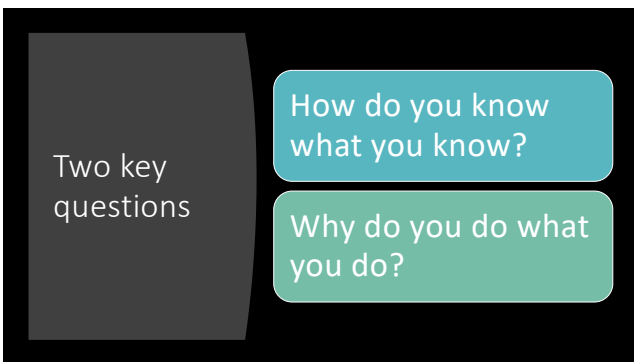
- Aspects of defensible practice
- Foundations of nursing practice
- Reading and understanding research
- Testimony
- Defense testimony
- Expert intimidation

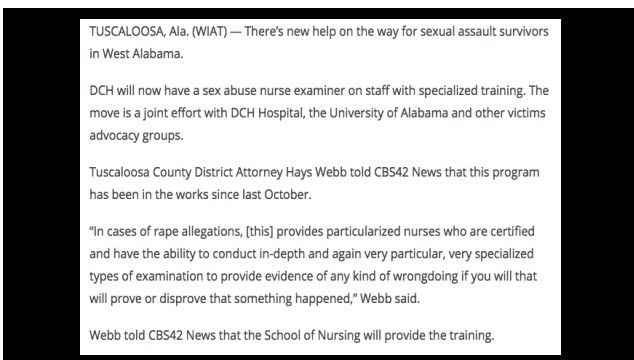


One that is supported by clinical experience, current research, and accepted practice standards.

What is a defensible practice?







TUSCALOOSA, Ala. (WIAT) — There's new help on the way for sexual assault survivors in West Alabama.

DCH will now have a sex abuse nurse examiner on staff with specialized training. The move is a joint effort with DCH Hospital, the University of Alabama and other victims advocacy groups.

Tuscaloosa County District Attorney Hays Webb told CBS42 News that this program has been in the works since last October.

"In cases of rape allegations, [this] provides particularized nurses who are certified and have the ability to conduct in-depth and again very particular, very specialized types of examination to provide evidence of any kind of wrongdoing if you will that will prove or disprove that something happened," Webb said.

Webb told CBS42 News that the School of Nursing will provide the training.

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.

LINKED OVER INSTAGRAM POST



Be conscientious about your social media use...

March 3 - JJ

I am giving up unsuccessful sexual assault prosecutions for Lent. All of the ones I am involved in have to win. So far, 2 for 2!! You go Justice!

However, on cross-examination, lead defense attorney Brian McMonagle, exposed the fact that [redacted] was not only biased, but that she also had previously expressed interest in the controversy around the case.

"You're biased in this case, aren't you?" McMonagle asked.

When [redacted] denied that she was biased, McMonagle showed the court a Facebook post from [redacted] company that linked to a Washington Post article about the Cosby case.

While having never stumbled in any of her responses to questions from prosecutors, [redacted] memory appeared tested as she said she couldn't remember, if she had posted the article.


Also, despite clear evidence that she made the comments on the post, she also initially refused to admit to them.

"Victory the case lives on," read one of her posts.

Judge Steven T. O'Neill still denied Cosby's lawyers' motion for a mistrial.

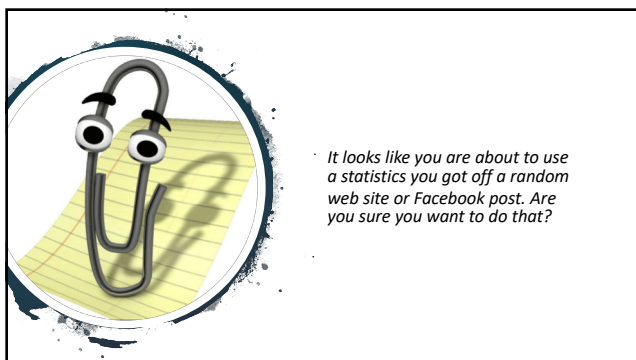
O'Neill has continuously ruled against Cosby's team, including several pre-trial and in-trial motions that could have leveled the playing field in the case.

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









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)

How is research generally presented?

- Abstract
- Introduction
- Methods
- Results
- Discussion
- Implications (policy/practice)
- Conclusion
- References

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.

Using Research Data



Memorizing statistics is not the key to effectively using research

- Knowing what the research says means knowing what is possible vs what is probable
- It means knowing when we just can't say for sure
- It provides the left and right limits of our knowledge when paired with our clinical experience

A study reports that 85% of patients reporting strangulation had visible injury.



WHAT CAN WE TESTIFY TO REGARDING THIS STATISTIC?



WHAT ELSE DO WE NEED TO KNOW?



HOW DO WE BEST USE THIS INFORMATION?

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?

A reminder...

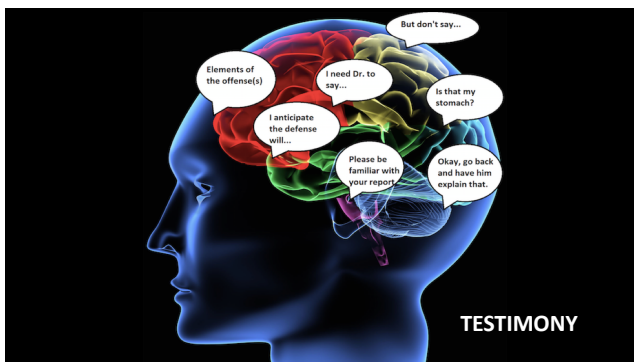
Just because it was published in a peer-reviewed journal and looks science-y doesn't mean it's good

ORIGINAL ARTICLES: ENDOMETRIOSIS

Attractiveness of women with rectovaginal endometriosis: a case-control study

Paolo Vercellini, M.D.,¹ Laura Buggio, M.D.,² Edgardo Somigliana, M.D.,³ Giuseppina Barbera, M.D.,⁴ Paolo Vignani, Ph.D.,⁵ and Luigi Fedele, M.D.⁶

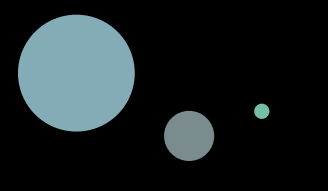
¹Clinica Ostetrica e Ginecologica, Istituto "Luigi Mangiagalli," Università degli Studi, and Fondazione IRCCS "Carlo Grande"-Ospedale Maggiore Policlinico; and ⁶Istituto Scientifico San Raffaele del Monte Tabor, Milan, Italy



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?




Preparing To
Be an Effective
Witness

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
- Networking with colleagues
- Peer review/QA/QI
- Routine clinical practice



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)?

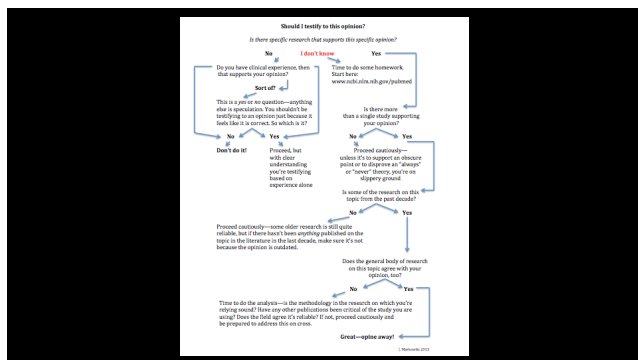


3.) Know your limits

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?





3a.) Don't Rush to Expert

- There's a difference between understanding the basic underpinnings of an issue and being an expert in that issue.
- Just because someone else thinks you are an expert on something doesn't mean you actually are.



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.



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



The [dreaded] cross-examination

A quick and dirty primer

Cross-Examination


Common areas of challenge:

- Qualifications
 - To render *this/any* opinion
 - Education
 - Clinical experience
- The exam
 - Documentation
 - Method
 - Evidence collection
- Refusal to make concessions
- Opinions
 - Without support
 - With statistics

Ways People Make Themselves Vulnerable

-  Refusing to concede the obvious or easy
-  Failing to know the science; cherry-picking the science; bending the science to fit your opinion
-  Straying from standards of practice

And the easiest one of all...




Getting snippy with counsel on cross is usually a losing proposition. Nothing positive can ever come from it, but plenty of negative can.

- Counsel has had days to build rapport with the jury; you've had minutes.
- Counsel can characterize you and your testimony any way they choose during closing arguments and there's nothing you can do to rebut it.

Strategies for Success

- 1 Find the supporting documents
- 2 Familiarize yourself with your foundations
- 3 Practice out loud
- 4 Peer review testimony
- 5 Assume reading is a non-negotiable part of your job



Things NOT to do after a tough cross:

1. Go back and change the way you practice
2. Quit

Your job | Teaching the judge or jury members.

Pretrial checklist

Identify	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	Review the case file and know it well enough to have the general details of the case memorized.
Identify	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	Identify any lapses in protocol, policy and procedure and be prepared to explain why if there are.



In Defense of the Defense

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.



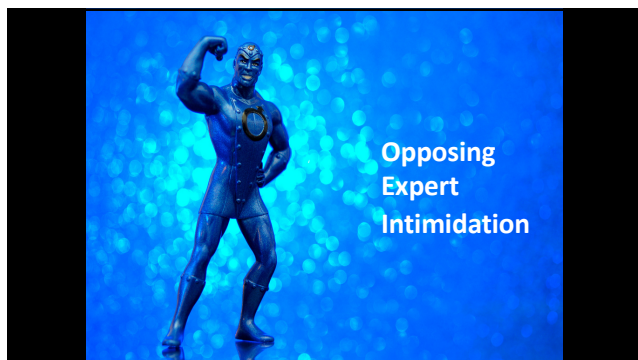
Understanding the approach of each side can enhance a nurse's testimony skill set.

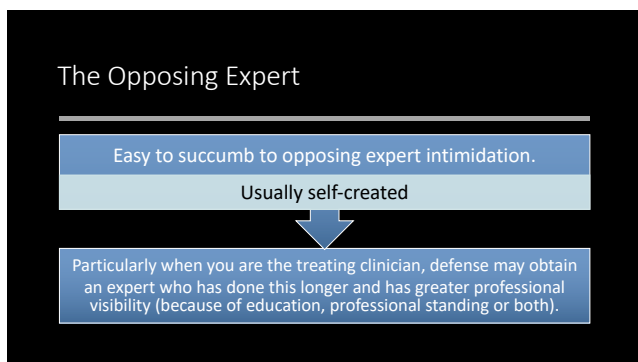
Testifying for the Defense

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?

- Sometimes the answer will be no.







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

Attorneys need to know 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.



Patients should not luck into an encounter with a forensic nurse who can provide complete, competent testimony. They deserve a clinician who puts as much thought and effort into maintaining this particular set of skills as any other skill related to the patient encounter.

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