

AAPL: Ask the Experts-2017

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Neil S. Kaye, MD, DFAPA and Graham Glancy, MB, ChB, FRC Psych, FRCP (C), will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send questions to nskaye@aol.com.

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Q.: How do I get a judge to understand that as a physician, I am quite capable of testifying about numerous medical topics and not just “psychology?”

A. Kaye:

Thanks for raising this issue, as this issue has long been one of my “pet peeves.” As a physician who specialized in psychiatry, I was on the early edge of the biological psychiatry movement and see myself as a forensic neuropsychopharmacologist. I do clinical drug research as well as clinical work. I have an exam room. I do ECG’s, draw blood, and do physical and neurological exams when appropriate. I don’t do long term psychotherapy [and I don’t own a couch. or have a couch in my office.](#)

Many people, including many judges, lawyers, and jurors still don’t understand the difference between a psychologist and a psychiatrist. I make sure that during the credentialing process, I have the lawyer lead me through a careful recitation of those differences and to make sure that I have ample time to explain to jurors that I am “a real doctor,” a physician, that I have delivered babies, put in sutures, and done lumbar punctures, or other things that may be relevant to medical aspects of the case.

In many cases (especially brain injury cases,) I have the expertise to talk about the biology, pathophysiology, anatomy, and medical aspects of the case. I don’t want to be limited to only behavioral or emotional topics. And, I believe that I may be the best qualified to actually do that work, and that to do less would actually compromise my ethics [and the oath I took to tell the “whole” truth.](#)

Most jurisdictions, allow a lawyer to qualify an expert and to specify thate expert's area of expertise. I encourage lawyers to be as broad as possible in that regard. Once I have been qualified as a physician, or as a brain injury expert, when opposing counsel objects, the lawyer for whom I am working can remind the court that I was already qualified in that domain and that my credentials allow for me to continue to teach and to opine. At the same time, I have a duty to limit my testimony to the actual breadth of my expertise, and to be prepared for vigorous cross-examination in all matters to which I opine.

However, I was just in a State case where one of the issues was a worsening of arthritis pain and autoimmune functioning due to emotional stress. The judge ruled that I was not allowed to talk about this since I am not a rheumatologist. I sat there dumbfounded and wondered if the expert rheumatologist would be barred from testifying about the affects of stress, as she isn't a psychiatrist. I couldn't figure out which expert would be allowed to "connect these dots" for the jury. Further, in that particular State, there is a controlling judicial opinion prohibiting an expert from being "qualified" by the court, as the court has held that to do so conveys an unacceptable imprimatur of honor or validation on an expert by declaring the expert "qualified" in a topic or field. Here, the burden on the retaining lawyer to push for admission of testimony becomes critical.

A. Glancy:

In preparation for this peiece, Dr. Kaye and I had a discussion about the famous philosopher Renée Descscartes and his philosophy of the mind. Regarding Descartes's most famous discourse on the nature of the relationship between a res cognitans and a res extensa, Dr. Kaye takes the position that judges accept the well-known cartesian dualism and place psychiatrists in the role of one who only knows about the mind, but not the body. In fact, I am taken back to my earliest philosophy courses at the University of Indiana, where in fact I learned that Descartes's perceptual and motivational theories were primarily physiological, suggesting that the bodily fluids or spirits control the body and that these spirits reside in the mind. In fact, like Francis Bacon, Descartes, in his later writing, "Discourse on Method," described a form of rational analysis, seeking a method of proof capable of establishing philosophical and scientific propositions. I think therefore that he was given a bad rap, and in fact his views are not far from the views of the contemporary expert, namely Dr. Kaye.

This case does raise the issue of what defines an expert in the courtroom. AAPL ethics guidelines cautions: us that "Expertise in the practice of forensic psychiatry should be claimed only in areas of actual knowledge, skills, training, and experience."

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Many cases in the area of the admissibility of psychiatric evidence look at the general acceptance (Frye v US., 293 F.1013(1923)), and in later cases there was a focus on the methods of the expert evidence (Daubert v Merrell Dow Pharmaceuticals, 509US 579 (1993)). In Canadian law, one of the preconditions of admissibility is that the witness must be qualified to give the opinion, or in other words be a probably qualified expert (R v Mohan 1994 1155 SCC). In a later review of a particular expert in pediatric forensic pathology, judge Goudge warned against the repercussions associated with admitting unreliable expert evidence. And a senior judge in Ontario, Mister Justice Archibald, warned his readers about the present overinclusive approach to admissibility of expert evidence (Archibald TL., Echlin SE., Annual Review of Civil Litigation 2014 Carswell: Toronto, Ontario).

Therefore, it would be my advice that a forensic psychiatrist should only opine on matters on which she they have specialized knowledge gained through experience and specialized training in the relevant field. I feel confident in saying that forensic psychiatrists have a general psychiatric experience, and therefore can satisfy the criteria for testifying about most aspects of general psychiatry, in the context of a psycholegal question.

On the other hand, where we are asked to stray into areas of general medicine, I would advise caution. Some of us may have had postgraduate training in general medicine, or as Dr. Kaye suggests, may be asked to opine about matters directly relevant to general psychiatry such as traumatic brain injuries or other general medical conditions that might have a direct contribution to psychiatric presentations. In these cases, we can legitimately claim expertise and should be allowed to opine.

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Take Home Points:

As the house of medicine strives to correct Descartes's error (or at least to clarify what he actually wrote) and to bring psychiatry back into the house of medicine as the medical specialty it really is, or at least to clarify what he actually wrote, in the definitively ~~ely non-expert~~ opinion of Dr Glancy, and to bring psychiatry back into the house of medicine as the medical specialty it really is, forensic psychiatrists are encouraged to continue to educate our legal colleagues about our proper role and place as medical experts.