Neil S. Kaye, MD, and Bob Sadoff, MD will answer questions from members related to practical issues in the real world of Forensic Psychiatry. Please send question to nskaye@aol.com.

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Q. I was asked to see two brothers who are alleging sexual abuse by a teacher about 40 years ago. My role in the case is strictly damages, as liability is a different issue being addressed by other experts. How should I proceed if I don't believe the liability is there, yet the damages are clear in that the plaintiffs have psychological problems that could have come from abuse?

A. Sadoff: The question asks: "How should I proceed?" My first response is: "You should proceed by refusing to take the case," since you do not believe there is liability. In civil tort cases damage must be related to an event for which liability may be claimed. There may be psychological damage, but if it is not caused by the defendant, there is no case. You cannot help the attorney for the plaintiff if you cannot give your opinion with a reasonable degree of medical/psychiatric certainty that the damage you have diagnosed is directly related to the alleged abuse. A number of psychiatric conditions diagnosed may arise from various causes, not necessarily from the one the plaintiff claims. That is why we must conduct comprehensive and thorough forensic psychiatric examinations and evaluations before rendering our opinions.

Next, is the statute of limitations, which normally runs two years unless a child is involved, then it is two years after the age of majority (which may be 18, 19 or 21, depending on the jurisdiction.) There is an effort to extend the statute in cases of child abuse and a few States have done so; be sure to know the State law on this issue. Then comes the concept of accrual, which in cases involving children, means the statute may be waived if the child was not aware of the abuse or its effect upon him or her until within two years of filing the claim. Several cases have been tried on this basis and most failed as the plaintiff who claimed not to know was found upon investigation to have complained to others while still a child, adolescent or young adult.

If you suspect the plaintiff's illness or symptoms was caused by the alleged abuse, you should proceed to conduct a thorough and complete forensic psychiatric evaluation, including collateral interviews and record review, to be able to give your opinion with a reasonable degree of medical certainty. It is not helpful to just describe the symptoms or give a diagnosis without the cause in such cases. There must be a nexus between the damage found and the alleged abuse for the case to prevail.

It is a good question that needs discussion so we continue to act in a truly ethical manner in working with lawyers. We should take only those cases that have merit. Sometimes, we do not know the merit until we conduct an examination. Working with experienced attorneys is often helpful.

A. Kaye: This sophisticated question provokes a host of issues and reactions. While it is up to the trier of fact to decide guilt or innocence, I believe most forensic experts nonetheless tend to reach an opinion about the validity of every case. That impression creates an ethical issue as well as a practical matter. My own personal ethics don't allow me to reach an opinion and then advocate for that opinion if it involves a fact pattern that I don't believe. It is nearly impossible to "prove" what occurred that long ago and these cases frequently are "he said, she said" battles. While lawyers will try to get me address a person's credibility, this is murky area at best and the law does not recognize any objective test of truth. Absent convincing evidence, the best I can do is to say that the damages are consistent with the allegations, but point out that there are many other potential causes of such symptoms. The presence of the symptoms does not in any way prove that the allegation is true. In fact, this is a common forensic criticism of clinical work in the area of PTSD, where a clinician will wrongly argue that the abuse had to have occurred because the patient has PTSD.

From a practical perspective, I find it very difficult to testify convincingly and with the requisite passion to be persuasive if I don't really believe in the case. While I suppose I could divorce myself and simply testify about the hard science, my experience is that the opportunity for that type of testimony is rare.

I would contrast this alleged abuse case with a similar scenario where a plaintiff is alleging medical malpractice. I am often able to testify that the damages relate to the behavior/what occurred by a medical colleague, but again, I leave the issue of violation of the standard of care to the appropriate medical experts. This would be the case where a bad outcome causes the clear damages but the legal liability (medical malpractice) may not be provable.

Sadoff/Kaye: Take home point: There is no place for unethical behavior in the medical-legal system and we have a duty to practice to the highest standards possible in order to preserve the dignity and decorum of our profession. Lastly, as experts, we are there to teach and should have no stake in the outcome of the litigation. Let your neutrality be empowering.