

AAPL: Ask the Experts-July 2012

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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. Please address some of the issues and challenges to be confronted as a forensic practice grows and becomes more time consuming.

Sadoff:

I found a number of issues when my forensic practice grew and consumed more time. Perhaps the most important one for me was the need to reschedule treatment patients when I was scheduled to testify in court. Not only was it a burden on the patient to change his/her usual time, but often the case was continued at the last minute, so I had no patient and no court appearance. That was the major reason I decided to stop treating patients and commit exclusively to an expanding forensic practice.

In addition to court demands that affected the patient, the growing forensic practice also involved traveling from home base to other parts of the country and even to other countries. Travel involved not only forensic cases, but lectures and forensic meetings that took me away from treatment patients. It was neither fair to them nor to me always rescheduling and shuffling.

A growing forensic practice often meant conflict in schedule for court time as well. One cannot be in two places at once; one has to assign priorities to different cases and which to attend and which to reschedule. I can recall having 3 cases in 3 states on the same day. I had to testify in New Jersey in a personal

injury case in the morning, a federal criminal case at noon in Pennsylvania and a malpractice case in Maryland in the late afternoon. That is too much to do in one day. I can also recall seeing eleven different defendants in three different jails in one long day. That is also too much for one person.

Traveling to different places on demand can also be very challenging. One cannot always predict how long the case will go and how to accommodate all demands by various judges and attorneys who need the expert in court at a designated time. This brings us to sharing cases with other experts when the demands become excessive. Attorneys usually want the expert they choose and not a "substitute". However, I found it to be very important for young forensic psychiatrists to be mentored (not partnered with) by an older experienced psychiatrist who can introduce him/her to new attorneys.

In some cases, I was able to refer attorneys to other psychiatrists who had a particular expertise in psychopharmacology, sex offenders, or addiction matters and could be of more help to the lawyers. In Pennsylvania, we have tort reform laws for malpractice cases that prohibit a psychiatrist from testifying against a colleague unless the expert practices in the same field: i.e., is treating inpatients or in a particular area as the defendant. Since I no longer treat patients, I am now precluded from testifying on liability in psychiatric malpractice cases and refer all to those colleagues with forensic experience who are still treating patients. I also feel that to minimize harm I will refer women involved in sexual abuse or harassment cases to female forensic experts and children to child and adolescent forensic psychiatrists.

Kaye:

This provocative question brings to mind the words often attributed to Confucius: "A smart man knows what he knows, a smarter man knows what he doesn't know."

Since I graduated medical school in 1984 the practice of medicine and indeed the entire health care delivery system of our country has changed dramatically. All of these changes affect my practice and hence my expertise. In order to be a competent expert, one must first be an excellent clinician. As time goes on,

it becomes more difficult to claim expertise in areas where one is no longer practicing.

One of the great changes has been in the delivery of inpatient mental health where most inpatient hospitalizations are being managed by hospitalists while outpatient work is managed by outpatient psychiatrists. It is possible to stay abreast of inpatient standards even if one is not actively treating hospitalized patients, but it would be unwise to simply believe that the processes and standards have not changed in the last decade. While no longer doing inpatient work myself, I have made it a point to visit inpatient units regularly and I am actively involved in writing the laws for our State that govern inpatient hospitalizations. This allows me to stay current and to comfortably present myself as an expert, as I am well aware of what is actually occurring.

Similarly advances in psychopharmacology can prove challenging to an expert who isn't really an active treater. I was in a case where the issue was pharmacologic in nature. The opposing expert was forced to admit that she had never prescribed the medications in question, an admission that seriously undermined her credibility.

While there is a temptation to accept all referrals (after all, we are business people) it is important to know when to say "no" and to freely refer lawyers to the appropriate colleague. Frankly, doing so actually will increase future referrals, as your honesty will be appreciated by all involved.

Certainly Dr. Sadoff has addressed the issue of time management. I have reduced my psychotherapy load to a bare minimum but find I am able to juggle a schedule of new patient evaluations and medication management with my forensic demands. However, rescheduling and rearranging will occur due to the vagrancies of the legal system.

Another potential pitfall is repeat business. While it is always nice that an attorney wants to use you as an expert repeatedly, the expert must be aware of the potential to want to always be able to help a lawyer who over the years has been a good source of business and may even have become a friend. It is critical to stick to the ethical principles of striving for impartiality and objectivity when performing every assessment.

The last issue I would raise is developing a reputation as always working for a specific side on any given issue. While no expert can control from whom the referrals come, it is unwise to always work for one side, be it plaintiff, claimant, defense, prosecutor, the State or an insurer. Throughout my career I have done my best to keep my caseload balanced in order to avoid any such claim being made. At times, this has required me rejecting a case for only that reason. I have never regretted those decisions and see it only as an investment in my reputation. I always smile when an attorney calls me and says that she wants to retain me first, because she knows if she doesn't, the other side will.

Sadoff/Kaye:

Take home point: Many young forensic experts are eager to grow practices. Many early-mid career psychiatrists see forensics as a way of escaping the problems of managed care and new CPT coding headaches. Forensics requires a serious commitment, can be very time consuming and will undoubtedly affect a clinical practice. Knowing the limits of your expertise is critical to maintaining a good reputation. It is that reputation that will drive your successful career.