

Testifying Tips for SANEs

FEBRUARY 2018



- Develop at least three ways to provide objective, accurate, evidence-based testimony in judicial proceedings
- Identify the forensic nurse's role in judicial proceedings
- Determine the differences in CV and a resume
- Discuss the key processes associated with pretrial preparation
- **Real Objective**
Grow as a professional and get better at the work we do!

Start Preparing Now.....



Where do I



■ Create a *Curriculum Vitae*

- CV is detailed
- CV is a chronological listing
- CV is full record of career history

Curriculum Vitae – long, covers your entire career

Resume – short, no particular format rule, highly customizable

Curriculum Vitae

- Plain Paper
- **Black and white**
- No weird fonts (Courier, Times New Roman, Arial)
- No colored paper
- No weird bullets
- Reverse Chronological Order

■ <http://www.forensichealth.com/2012/06/05/clinical-guide-court-testimony/>

What to Include

- Personal information - Name, address, phone number, email
- Education
- Professional Certifications & Licenses
- Work experience – dates, company, position
- Continuing education – Conferences, webinars, trainings
- Additional information –
Professional Memberships, Committees, Awards/Accomplishments, Pertinent
Volunteer Experience, Research Experience, Posters/Abstracts/Manuscripts,
Presentations

Before You Go to Court

- Keep learning – read, conferences, webinars
- Keep your CV up to date
- Know your resources
 - Minnesota Nurse Practice Statute
 - Forensic Nursing Scope and Standards
 - Protocols – National and program specific



Defensible Practice: Words of Wisdom from Jen Markowitz

- “How do you know what you know?”
- “Why do you do what you do?”
- Less than 10% of patients will see the inside of a courtroom
- 100% of patients exposed healthcare sequelae of violence
- Know your terms
 - Practice articulating the definition – out loud!
 - Know how to spell them
- Think about differential diagnoses

Social Media

- Be very wary of social media
- Defense **can and will** google you
- Be careful with liking posts and reposting
- Be careful with texting about patients
- Know your institution’s policy on social media





Subpoena

- Call within 24 hours of receiving the subpoena
- Subpoenas are sent out 4-5 weeks prior to the trial date
- If the trial date presents a problem, notify them immediately
- Get a copy of your chart

Prior to Trial

- Keep in mind that anything you write about the case is potentially discoverable
- The attorney will contact you for trial prep if the case is going to trial
- Know your case/report - Review it before meeting with the attorney
- Discuss with the attorney the issues in the case so you know what to expect
- Discuss what is unusual about this case
- Draw on your experience and training to explain your findings
- Anticipate areas of weakness and discuss them with the prosecutor prior to trial
- Ask prosecutor what type of questions to expect on cross exam
- Memorize your report

Defense wants to talk to you.....

- Let the prosecutor know
- Schedule a time to talk to them together
- Ask to read their notes of the conversation
- Subpoena – let the prosecutor know

Going to Court

- Dress professionally
- Limit excessive jewelry and other accessories which can be distracting
- Don't chew gum
- Turn off your cell phone
- Don't bring anything with you that you wouldn't want the court to see
- Don't be too nervous – judges and juries love nurses

Your Role in Court

- The role of the examiner in court is to educate judges and juries
 - Role of the Forensic Nurse
 - Steps of the medical forensic exam
 - Identification, collection and preservation of evidence
 - Presence (or lack of) physical findings
 - Limitations of the forensic examination
- Your role is to be objective – not to “help” the prosecutor

In Court

- Be sincere, polite, and appear in control
- Remain neutral & unbiased
- Be honest and factual
- Talk slowly and remain calm
- Make eye contact with attorneys and with the jury
- Listen to the entire question prior to answering
- Take a breath!



In Court

- Let the attorney guide the questioning
- Answer only questions that are asked
- Do not elaborate unless the attorney or judge asks for more information
- Ask for clarification if unclear
- "I don't know" is a complete sentence
- "Beyond my scope of practice"
- Avoid terms such as "I believe" or "I think" – don't guess
- If you do not recall a specific event, do not hesitate to say that
- Ask to refresh your memory by looking at your chart

Federal Rules Of Evidence - 612



Rule 612 – Writing Used to Refresh a Witness's Memory

(a) **Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) while testifying; or

(2) before testifying, if the court decides that justice requires the party to have those options.

(b) **Adverse Party's Options; Deleting Unrelated Matter.** Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) **Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

be.PREPARED

- Explain medical terms
- Use forensic terminology when describing findings
 - Abrasion vs. Scratch
 - Contusion vs. Bruise
- Be comfortable talking about genitalia – learn how to draw vulva
<https://www.theguardian.com/lifeandstyle/ng-interactive/2016/sep/23/draw-a-vulva>
- Practice your testimony

Direct Examination – Prosecutor

Qualifying Questions

- How long have you been a nurse – do you have a specialty or area of practice?
- You noted you are a SANE nurse - what is that?
- Do you have any special training to be a SANE nurse? Can you describe that training?
- How long have you been a SANE nurse?
- Approximately how many SANE exams have you conducted?
- Do you belong to any professional organizations?

http://www.aequitasresource.org/Prosecutor_Reference_Medical_Evidence.pdf

Direct Examination – Prosecutor

Description of the exam

- What is a sexual assault forensic exam?
- Describe the SANE exam – how long it takes, why it is done.
- Did you perform a SANE exam on.....(patient name)
- Can you describe the specific steps you took in examining the victim in this case?
- You said that one of the first things you ask is the victim's medical history. Can you explain why you do that?
- You also said that you asked the victim about what happened during the assault. Why did you do that?

http://www.aequitasresource.org/Prosecutor_Reference_Medical_Evidence.pdf

Cross Examination

- Conducted by defense attorney
- Questions will be leading in nature
- Listen carefully before you answer
- Think like a skeptic – What is he/she really trying to get at?
- When defense highlights a weakness, answer in a way that is positive whenever possible
- Maintain same demeanor as on direct examination
- Prosecutor will redirect – often a form of damage control

Therese Galatowitsch - Sr. Assistant Hennepin County Attorney

What if the defense.....

- Uses an expert?
 - As the treating clinician you are the expert –
 - No one has more information than you
 - No one else was in the room
 - Required to notify the court they are using an expert
 - Ask what they are going to testify to
- Asks – “you are not a doctor – are you?”
 - Different professions
 - MDs are not experts in nursing practice
 - Not a lesser degree – different degree



Overruled: When an objection is overruled, the judge has determined the objection is invalid. The question may stand. The witness must then answer the question.

Overruled = Ongoing, as in the witness may continue as if the objection never occurred

OBJECTION

Sustained: When an objection is sustained, the judge has determined that is a valid objection. That means the question was improper under the rules of evidence. The witness may not answer the question. (If the witness answers anyway, that answer may be "stricken.")

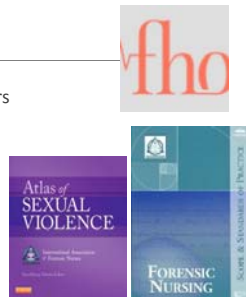
Sustained = Stop, as in the witness must stop and not answer the lawyer's prior question.

Testimony is Forever

- Your trial transcripts are available
- Prior testimony is reviewed
- Refrain from speculation
- Don't guess
- Don't back yourself into a corner
- Best testimony is peer reviewed
 - What worked
 - What didn't
 - Objective feedback

After Court

- Keep learning – read, conferences, webinars
- Keep your CV up to date
- Take time to reflect on your testimony
- Ask for feedback
- Testimony is forever!



Resources

- IAFN – Vision of Ethical Practice
<http://www.forensicnurses.org/?page=visionethicalpract&terms=%22ethics%22>
- Forensic Nursing Scope and Standard of Practice – IAFN store
- ANA Standards of Practice - <http://www.nursingworld.org/nursingstandards>
- A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents
Second Edition U.S. Department of Justice Office on Violence Against Women April 2013
- Minnesota Nurse Practice Act MN Statute § 148.17 <https://www.revisor.mn.gov/statutes/?id=148.171>
- Writing Used to Refresh Memory <http://federalevidence.com/rule-elements/FRE.612>

Resources

- The Nursing Process - <http://www.nursingworld.org/EspeciallyForYou/What-is-Nursing/Tools-You-need/TheNursingprocess.html>
- ABC's of Sexual Assault – M. Dittton RN, SANE A SANE P & L. Gray ID - Appendix with sample direct and cross questions
- A Prosecutor's Reference - Medical Evidence and the Role of Sexual Assault Nurse Examiners in Cases Involving Adult Victims
http://www.aequitasresource.org/Prosecutor_Reference_Medical_Evidence.pdf
- Forensic Healthcare Online <http://www.forensichealth.com/2012/06/05/clinical-guide-court-testimony/>
- Medical Forensic Sexual Assault Examinations What Are They, and What Can They Tell the Courts? L. Schafren http://www.ncdx.org/II_Medical-ForensicSA-Examinations_2015.pdf
- The Voice – She didn't scream, So She Must Have Wanted it A. Ratnayake Great list of questions
http://www.ndaajustice.org/pdf/the_voice_vol_4_no_2.pdf
- Sexual Assault Quick Reference Second Edition Diana K. Faugno – Great questions to help prepare for testimony
