



## Ethical Expert Witness Testimony

### Problem Statement

Forensic nurses routinely are called upon to provide expert consultation and witness testimony. Our Vision for Ethical Practice states, “Forensic nurses should seek to advance nursing and forensic science, understand the limits of their knowledge, and respect the truth” (International Association of Forensic Nurses, n.d.). The statement also underscores that “[s]cientific misconduct, such as fabrication [and] falsification...” is incompatible with ethical practice (International Association of Forensic Nurses, n.d.). Moreover, almost half of the enumerated Standards in the *Forensic Nursing: Scope and Standards of Practice* reference competencies directly related or complementary to ethical testimony (International Association of Forensic Nurses & American Nurses Association, 2017). In looking to other associations, many medical organizations have addressed expert testimony, but only a few have provided guidance for ethical testimony specific to interpersonal violence or abuse (Miller, A. J., Narang, S, et al., 2020; Paul, S. R., Narang, S. K., et al., 2017). Requests from the field—coupled with the increasing opportunities for forensic nurses to serve as expert witnesses—necessitate the development of clear parameters for ethical expert witness testimony.<sup>1</sup>

### Position

Expert witness testimony is an integral aspect of forensic nursing; recognizing who is qualified is a decision for the courts. Acknowledging that the role of the expert witness is that of an objective educator, the following are necessary aspects of ethical expert witness testimony:

1. **Accurate representation of qualifications:** The forensic nurse expert witness accurately represents their education, training, qualifications, experience, and professional accomplishments in writing and in testimony. Any action attempting to mislead counsel, factfinders, or community about the forensic nurse’s professional background or qualifications fails to uphold the nurse’s ethical responsibilities to society.
2. **Current, unrestricted licensure:** The forensic nurse expert witness holds an active, unencumbered nursing license; an individual who is retired may hold an inactive license.
3. **Current practice in which the forensic nurse is testifying:** The forensic nurse expert witness provides testimony within their specific area of expertise, practice, and professional experience, which represents current practice standards, including evidence-based, research-informed knowledge. Forensic nursing practice includes a range of roles and responsibilities based on the nurse’s education, competence, and authority to perform in their given nursing practice (including the practice areas of education, policy, research, administration, and direct patient services).
4. **Review of the body of evidence:** The forensic nurse expert witness considers the body of evidence available to inform expert testimony and understands the limits of each to the



specific topic of testimony. The forensic nurse expert witness does not misrepresent the data reviewed or the science supporting the nurse's testimony and opinion.

5. **Currently accepted practice standards:** The forensic nurse expert witness provides testimony consistent with accepted practice standards. Any differences between currently accepted practice standards, such as community practices or organization-specific policies, should be identified and explained.
6. **Boundaries of the accepted science:** The forensic nurse expert witness provides testimony that is consistent with the accepted science, accurately represents the accepted science, and does not attempt to use existing science to mislead. Where a lack of scientific consensus exists or the expert witness disagrees with the current science, the forensic nurse expert witness identifies and explains the disagreement.
7. **Expert witness compensation:** The forensic nurse expert witness bases all opinions on credible resources, including evidence, applicable research findings, practice standards, and science. When a forensic nurse expert receives financial compensation, the compensation is for the expert's time and not for providing a specific opinion.
8. **Conflicts of interest and conflicting interests:** The forensic nurse expert witness's consultation and testimony are free of conflicts of interest and conflicting interests. The forensic nurse is responsible for identifying any conflict of interest or conflicting interest and for bringing such to the immediate attention of retaining counsel. This responsibility includes any personal, professional, or financial association that may be perceived as a conflict of interest or represent conflicting interests.

## **Rationale**

The function of an expert witness in civil and criminal courts assumes they will work independently of the retaining counsel and provide accurate testimony (Andrew, 2006). An expert witness is responsible for objectivity, honesty, and fidelity to standards of practice and science. Ultimately, the services provided by the expert witness receive scrutiny by their discipline's ethical standards (Sanders, 2007). The International Association of Forensic Nurses has not previously offered explicit parameters for ethically sound expert witness testimony. It is time to publicly establish the parameters for ethical testimony in the forensic nursing profession.



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INTERNATIONAL  
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