

Virtual Mentor

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CLINICAL CASE

Giving Medical Testimony in a Patient's Behalf

Commentary by Clete Kushida, MD, PhD

Dr. Carter had known Benji since he was born, taking care of him and his two sisters until they left for college. Over the years and after many visits, Dr. Carter developed a fond relationship with the entire family. Naturally he was shocked to learn through a call from defense lawyers that Benji was being charged with attempted manslaughter. Benji had always been a respectful and conscientious young man; he was the valedictorian of his high school class, the captain of the soccer team, and a volunteer in the Big Brother's program. According to court papers, Benji had thrown his baby from the window in his apartment in the middle of the night. Luckily, the baby survived, but when neighbors heard the commotion, they called the police and Benji was found standing outside the building in his pajamas and was arrested. When police questioned Benji, he had no recollection of the events, claiming that the police had awakened him when they arrived at the scene.

Dr. Carter remembered the many accidents Benji had had when sleepwalking over the years. In addition to a number of bruises and lacerations from the incidents, he once walked into a sliding glass door and sustained injuries that required suturing on his head, face, and arms. Dr. Carter had conducted a thorough neurological work up on Benji to try to explain these bizarre episodes, but never he found any pathology that could cause the sleepwalking. He thought Benji would eventually outgrow the events, as most children do. Dr. Carter remembered Benji fondly, but was hesitant to help in the defense of his case because he couldn't imagine something as benign as sleepwalking resulting in attempted manslaughter. Moreover, he did not want to get involved in the case because he felt it wasn't part of his duty as a physician.

Commentary

Sleepwalking is estimated to occur in up to 4 percent of the adult population, and violent behaviors arising from sleep have been reported in 2 percent of adults [1, 2]. Unusual behaviors during sleep (parasomnias), particularly those associated with violent or injurious behavior, are best managed by a sleep specialist (i.e., a clinician with specialized training in sleep medicine obtained at a center accredited by the American Academy of Sleep Medicine). With respect to Dr. Carter's clinical management of this case, it is curious that he did not refer Benji to a sleep specialist, especially after several sleep-related accidents, one of which caused serious injury.

A Physician's Obligation to Provide Testimony

Turning from the clinical aspect of the case, we confront a physician's uncertainty about how involved he should be in the legal proceedings of his patients. Generally,

physicians can serve the court in a professional capacity by testifying as medical experts or as individuals with the most intimate knowledge of a defendant's medical history.

Expert medical testimony. As a family physician who has no specialty training in sleep disorders, it is unlikely that Dr. Carter qualifies as an expert medical witness. Although he can testify that Benji had incidents compatible with a diagnosis of sleepwalking during his adolescence, cross-examination might reveal that Dr. Carter has observed only a small number of similar cases and that his knowledge and experience with the diagnosis and management of sleepwalking are limited. Were Dr. Carter to be classified as an expert for the defense, there is the possibility that the prosecution could weaken the defense's case by mentioning his failure to seek a referral to a sleep specialist, and they might uncover that Dr. Carter "couldn't imagine something as benign as sleepwalking resulting in manslaughter." Thus, a defendant's having been under the care of a given physician, does not always mean that that physician is an ideal or even competent expert witness in a patient's defense.

General medical testimony. Even though Dr. Carter is not qualified to testify as a medical expert, he is able to provide limited relevant information to the court, particularly since his professional relationship with Benji extended only through the latter's developmental years. The American Medical Association (AMA) position on medical testimony states that, "As citizens and as professionals with specialized knowledge and experience, physicians have an obligation to assist in the administration of justice" [3]. In addition to Dr. Carter's role or duty as Benji's family physician, one could argue that Dr. Carter has an ethical—and even a moral—obligation to help support the claims that Benji has a history of sleepwalking.

The Patient-Doctor Relationship in Court

The patient-doctor relationship extends into the legal sector in that, as stated in the AMA's medical testimony policy:

When a legal claim pertains to a patient the physician has treated, the physician must hold the patient's medical interests paramount, including the confidentiality of the patient's health information, unless the physician is authorized or legally compelled to disclose the information [3].

Thus, if Dr. Carter is called upon to testify, he is legally compelled to disclose Benji's medical information. In this situation, Dr. Carter would have an obligation to discuss his knowledge of Benji's medical history in an objective and independent manner. Further, Dr. Carter might be expected to provide information about Benji's character, even if disclosing such information would damage his patient's defense. Being human, it may be difficult for Dr. Carter to separate emotions or feelings from testimony, but he must make every attempt to give testimony that is as fact based and objective as possible.

Other Considerations

If Dr. Carter is called to testify as an expert witness, he should ask himself whether he has sufficient medical information about Benji or enough knowledge or experience with parasomnias to provide relevant information to the court. If he is being called to give general medical testimony, Dr. Carter should ask himself whether he can separate his fondness for Benji and Benji's family from his duty to supply objective testimony. Does he believe that it is possible that Benji's action could be explained by sleepwalking?

Conclusion

Physicians are highly respected members of society, and their testimony is frequently sought in cases involving medical malpractice, personal injury, or medical conditions that may be responsible for injury or death. In cases attributed to sleep-related violence, medical testimony is becoming the norm rather than the exception. Most physicians are not qualified to provide expert testimony, but they can still be helpful to the court. If they are requested to testify, physicians should carefully consider their obligation in the administration of justice, the patient's medical interests, and their ability to provide testimony that reflects current scientific thought and standards of medical practice. In our case, Dr. Carter's legal role or duty as Benji's family physician is highly dependent on whether he is able to provide relevant, honest testimony in the case, and this decision resides with the defense attorney.

References

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Clete Kushida, MD, PhD, is the director of the Center for Human Sleep Research at the Stanford University Center for Sleep Research in Palo Alto, California. Dr. Kushida directs several NIH- and industry-sponsored research studies on topics such as the physical features and neurocognitive changes associated with the obstructive sleep apnea syndrome, the epidemiology and treatment of restless legs syndrome/periodic limb movement disorder, primary care sleep education and training, and countermeasures for sleep loss.

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