The CRNA as an expert witness

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To function as a CRNA requires education, skills, and knowledge that most people do not have. Because courts, lawyers, and the public cannot understand what CRNAs do, the law puts them in the category of professionals. Professionals set their own standard of care. When courts need to know what the standard of care is, they get expert testimony. Testimony on the standard of care may arise not only in malpractice actions, but may occur in other contexts as well. For example, in disciplinary proceedings the conduct of a CRNA may be questioned and expert testimony will be necessary. Are there limits of a CRNA's expert testimony or the subject areas in which CRNAs may provide expert testimony?

Expert testimony differs from testimony of an ordinary witness. An ordinary witness is allowed to testify only as to facts or observations gleaned from first-hand participation in an event. On the other hand, an expert is allowed to offer his or her opinions based upon facts, including opinions which are not based on his or her actual first-hand knowledge or observation. The Federal Rules of Evidence say that the standard under which expert evidence is admitted in the federal courts is: 

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." (Rule 702)

Thus the rule specifies three principles. First, the knowledge of the expert witness must assist the trier of fact (a judge or a jury) in understanding the evidence in a case or in making a factual determination.

Second, the witness must be "qualified" as an expert. This qualification can be obtained by a variety of means: knowledge gained over time, certain skills or experience acquired during one's life, or formalized training or education. An experienced home builder, for example, could provide expert testimony regarding how homes are constructed, although that home builder might have had no formal education in regard to the process of building homes. But the home builder probably would not be permitted to testify as to how an architect should design a home.

Third, as the United States Supreme Court stated in a recent case, 

"Daubert v Merrell Dow Pharmaceuticals, Inc. 113 S. Ct. 2786 (1993), "[t]he subject of an expert's testimony must be 'scientific... knowledge.' The adjective 'scientific' implies a grounding in the methods and procedures of science. Similarly, the word 'knowledge' connotes more than subjective belief or unsupported speculation." Moreover, expert testimony will be admitted only if it concerns an issue which is beyond the comprehension or knowledge of a lay person. For example, a patient may testify that he or she had discussions with an anesthetist about the risks associated with anesthesia and may also
state what her understanding was as a result of those discussions; however, the means by which anesthesia generally is given to a patient and the effect of anesthetic agents on the human body are types of information that are beyond the knowledge of the patient and, if relevant to the action, require an expert to explain.

**Expert evidence questioned**

In *Daubert*, minor children and their parents sued a drug company which marketed the drug Bendectin®, claiming that the use of Bendectin, a prescription antinausea drug, by the mother during pregnancy had caused serious birth defects in the children. The drug company showed that in more than 30 published studies, no study had found that Bendectin caused human birth defects. It claimed that the children and their parents could not provide any admissible evidence to show that Bendectin caused birth defects in human beings. The children and their parents did not claim that there was a study showing that Bendectin caused birth defects in human beings but instead provided evidence of animal-cell studies, live-animal studies, and chemical structure analyses to support their position and also provided “reanalyses” of the drug company’s epidemiological studies. The trial court judge agreed with the drug company and granted judgment against the children, ruling that the studies and chemical analysis were insufficient because they were not based upon epidemiological evidence, and the reanalyses were inadmissible because they had not been published or subject to peer review.

The United States Supreme Court reversed. It held that expert evidence did not need to be generally accepted in order to be admissible. Rather, the trial judge must simply assure that “an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” In other words, the knowledge imparted by an expert must be knowledge based on certain methods and procedures rather than mere subjective belief or speculation; publication and peer review, however, is not the only means for determining reliability.

**Expert testimony challenged**

It is generally recognized that CRNAs are competent to provide expert testimony. As noted above, the need for expert testimony typically arises in medical malpractice actions but also may be used in other contexts, such as disciplinary proceedings. For example, in a Louisiana case, *Young v Department of Health and Human Resources*, 405 So.2d 1209 (La. App. 1981), a hospital nurse anesthetist, employed in a state-run facility, was dismissed from his position. He challenged the dismissal, and a state civil service commission hearing was held concerning that dismissal. At the hearing, evidence was presented concerning various alleged violations of his duties, including a failure to properly monitor a patient’s vital signs and the failure to properly anesthetize two patients. A series of experts testified, including two nurse anesthetists, who testified about acceptable standards of care at the institution, how anesthesia is administered, and whether this nurse anesthetist provided an acceptable level of care to his patients.

On appeal, the discharged nurse anesthetist challenged the Commission’s decision to admit the expert testimony of the nurse anesthetists, claiming that they were not “experts” in the field of nurse anesthesia because they did not hold the highest degree available in the field (they both had bachelor of science degrees in nursing with specialized training in nurse anesthesia). The appellate court rejected this argument, holding that their testimony was not offered as that of eminent authorities on nurse anesthesia, but was offered to show what professional standards were acceptable and used at the hospital. If they did not hold the highest degree available in their field, “this should go to the weight of their testimony rather than the admissibility.” That is, they were qualified to testify and any reservations about their qualifications could be considered by the jury in whether to believe their testimony.

A more recent example of a nurse anesthetist being allowed to testify as an expert witness is a recent medical malpractice case decided by the Supreme Court of North Carolina, *Harris v Miler*, 335 N.C. 379, 438 S.E.2d 731 (1994) (a case that was discussed in another context in this column several months ago). In *Harris*, a CRNA administered anesthesia to a patient during back surgery while working under the “responsibility and supervision” of the surgeon. The plaintiff attempted to introduce the expert testimony of a nurse “qualified as an expert in nurse anesthesia care...” The trial court excluded the testimony, holding that the nurse anesthetist could not testify on the need for supervision, whether there was a medical emergency, and whether the surgeon had a duty to provide that supervision. The North Carolina Supreme Court reversed, ruling that a nurse anesthetist who had participated in thousands of operations was competent to testify as to standards of practice of nurse anesthetists as well as the manner in which surgeons ordinarily supervise nurse anesthetists.
Testimony must relate to expert's area of expertise

The testimony of an expert witness must be related to the expert's expertise. In a recent case, the court had difficulty understanding the capabilities of a nurse anesthetist. It was alleged that a CRNA had been negligent in administering doses of medication to the patient and in monitoring the patient during surgery. As a result, the patient claimed that she had suffered a vasovagal episode. The patient recovered fully and apparently suffered no damage. At trial, the patient attempted to offer the expert opinion of another CRNA, that the CRNA treating the patient had deviated from the appropriate standard of care. The trial court refused to admit this testimony. The appellate court affirmed this decision because no information had been provided to the trial court as to whether the CRNA who had been called as an expert witness was an expert on whether the anesthesia caused the vasovagal episode. Under applicable law, a nonphysician expert could give evidence that would be relevant to a diagnosis of a medical condition if the testimony was within the expertise of the witness. Both the trial court and the appellate court did not feel that sufficient evidence had been introduced concerning the familiarity of CRNAs with vasovagal episodes.

A North Carolina appellate court applied the same principle in York v Northern Hospital District of Surry County, 88 N.C. App. 183, 362 S.E.2d 859 (1987). In that case, a CRNA participated in a cesarean section delivery. At birth, the baby “was not breathing, had a faint heartbeat, and had a blue color.” The CRNA “inserted an endotracheal tube and administered oxygen...” Later it was learned that the baby suffered from mental retardation and had cerebral palsy; a lawsuit followed. A verdict entered for the defendants, and the plaintiffs appealed, claiming that it was error not to permit the head surgical nurse at the hospital to testify as to the standard of care of a surgeon or anesthesiologist. The appeals court rejected this claim for the same reasons used by the appellate court in the previous case: no testimony had been introduced showing that the nurse was familiar with the standards that govern surgeons or anesthesiologists.

CRNAs, like any other individuals with specialized education or training, may testify as expert witnesses in regard to their areas of expertise. Of course, as with any other expert, testimony must be introduced that they have expertise in the proper areas before their expert testimony will be considered.