



W09 Putting the Expert on Trial

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After attending this presentation, attendees will: (1) recognize and understand the significance of various pediatric injuries; (2) understand the process of discerning inflicted from accidental injuries causing death; (3) appreciate the effective use of consultants in certain pediatric deaths; (4) realize the potential legal risks of providing opinions as practitioners and consultants; and, (5) be informed about appropriate practices to follow in the event of subsequent allegations of improperly practicing the forensic sciences and providing opinions.

This presentation will impact the forensic science community by clarifying the recognition and significance of various pediatric injuries, improving the determination of inflicted from accidental injuries, and preparing practitioners and experts for potential litigation against them for providing their opinions.

The juxtaposition of medical science and justice is fraught with challenges. Whereas scientific reasoning seeks to objectively explore theory with empirical observation, American justice is adversarial by design. This contrast is particularly problematic in homicidal abuse, with a helpless and preverbal victim on the one hand, and an accused caregiver on the other; one life lost and the other hanging in the balance. Adding to the incendiary environment is a recent Supreme Court dissent claiming that “doubt has increased within the medical community,” which in turn has led to doubts about the existence of abusive head trauma in general. Assertions of flawed studies, circular reasoning, wrongful incarceration, and miscarriages of justice occur with regularity, on the part of doctors and lawyers alike. It is therefore not that surprising that the justice system on occasion might turn on the primary interpreters and put the forensic pathologist on trial; however, the educational value of such a case is immense.

This workshop is centered on the case of a 20-month-old toddler who was found dead in bed. Autopsy examination disclosed many hallmarks of abuse and the death was certified as homicide. The boyfriend of the deceased’s mother was eventually charged and incarcerated; however, after receiving opposing opinions from experts for the defense, the prosecutor dismissed all charges with prejudice, after which four pathologists, the arresting officer, a municipality, a county, and a hospital were sued in federal court for due process violations, under auspices of the 4th, 6th, and 14th amendments of the United States Constitution.

This workshop will review the multiple aspects of medical science raised in this case, with strict adherence to the scientific method and quality of evidence — in effect a systemic review of all relevant literature. The topics will include: clinical and social context of child abuse, perpetrator data, cutaneous bruising in physical abuse, impact-related abusive head trauma vs. shaken baby syndrome, subdural hematoma, severe hemorrhagic retinopathy, mechanisms of parenchymal injury in pediatric head trauma, short distance falls, lucid intervals vs. pathological timing of injuries, brain injury biomechanics, second impact syndrome, coagulopathy (intrinsic versus drug-induced versus trauma-induced), and child abuse mimics. Included in this workshop will be an experienced attorney who devoted numerous hours to the civil case on the defense side researching case law, engaging in motion practice, and incorporating medical science. This attorney will explore in-depth the concept of qualified immunity, areas of inherent risk and exposure to due process and malpractice claims targeting forensic pathologists in child abuse and other cases, tactics and philosophies of personal injury lawyers, and strategies for pre-emptive protection of forensic pathologists in a hyper-litigious environment.

After considering the scientific underpinnings of the manner of death assessment, a number of additional questions will be raised for discussion, including, but not limited to, the following: (1) Is the American justice system capable of litigate medical science?; (2) What is the risk to forensic pathologists of certifying a child abuse case as homicide?; (3) What is the level of adherence to scientific principles by lawyers seeking damages and/or their retained experts?; (4) How often is medical science co-opted by retained experts relying on *ipse dixit* opinion and low evidence quality?; (5) What is the extent of the chilling effect on the willingness to properly certify manner of death and/or offer objective opinion as an expert if the scientific conclusion is homicidal child abuse?; (6) Are personal and pecuniary biases on the part of retained experts corrupting otherwise robust science in civil and criminal justice?; (7) Should expert panels be employed to litigate medical science instead of individual retained experts?; and, (8) What justice systems in other countries may serve as better models to deal with the juxtaposition of medical science and justice?

Child Abuse, Forensic Pathology, Jurisprudence