

Scope of Expert Testimony—Problems

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1. At the proceeding, Psychologist testifies as an expert in your case. Specifically, Psychologist testifies that Child is a “truthful child.” There is an objection asserting that this is impermissible opinion testimony on the credibility of a witness. Is Psychologist’s testimony admissible?
2. On direct examination you ask Psychologist: “Do you have an opinion regarding whether Child is afflicted with a mental condition that might cause her to fantasize about sexual assaults?” There is an objection asserting that the opinion testimony will go to the credibility of a witness. Is such testimony admissible?
3. On cross examination of Psychologist, the lawyer on the other side asks whether Child had been coached by others involved in the case. On redirect, you ask Psychologist: “Did you pick up on anything suggesting that someone had told Child what to say or that Child had been coached?” There is an objection, arguing that this opinion testimony impermissibly goes to credibility of child. Is this testimony admissible?
4. On direct examination, you ask Psychologist: “Do you think that Child and Grandmother got together & told each other what to say?” Psychologist responds: “No, I don’t think so.” There is an objection, arguing this is impermissible opinion testimony as to credibility. Is this testimony admissible?
5. Pediatrician II testifies as an expert in pediatric medicine specializing in child sexual abuse. Based on her examination of Child and Child’s statements during the examination, Pediatrician II testifies that Child was sexually abused. An objection is made, arguing that is impermissible opinion testimony on credibility. Is this testimony admissible?
6. Now Pediatrician II testifies that during examination of Child she noted the absence of a hymen and bruising and notching at six o’clock on the vaginal opening. Pediatrician II testifies that the injuries were consistent with vaginal penetration and that Child was sexually abused. An objection is made. Is this testimony admissible?
7. Suppose now that it’s a case of digital penetration and that Pediatrician II’s examination of Child reveals no evidence of abuse. Based on Child’s history & her statements to Pediatrician II about the abuse, Pediatrician II testifies to the opinion that Child suffered from sexual abuse. There is an objection. Is this testimony admissible?
8. Back to our original fact pattern except now, when Pediatrician II examines Child, Pediatrician II finds that Child’s hymen is not intact but finds no other injuries. When

Pediatrician testifies that Child suffered from sexual abuse, there is an objection. Is this testimony admissible?

9. Child has contracted a sexually transmitted disease that could have been contracted without sexual contact, although that is very unlikely. Pediatrician II testifies that Child was probably sexually abused. An objection is made. Is this testimony admissible?

10. Based on the Psychologist's observation of Child's behavior during treatment & Child's statements, Psychologist testifies to the opinion that Child was sexually abused. An objection is made. Is this testimony admissible?

11. Psychologist testifies as an expert (1) regarding characteristics of children who have been sexually abused, including behavioral issues & emotional problems & (2) that Child displays behavioral & emotional issues consistent with those characteristics. An objection is made, arguing that there were no physical findings supporting the conclusion that the child was abused. Is this testimony admissible?

12. Psychologist expert testifies that as a general rule, children do not make up stories about sexual abuse & that the younger the child, the more believable the story. There is an objection, asserting that this is opinion testimony as to the credibility of the witness. Is this testimony admissible?

13. You offer Psychologist's testimony as substantive evidence that abuse occurred. Psychologist testifies that Child suffers from post-traumatic stress syndrome & conversion reaction. There is an objection. Is this testimony admissible?

14. Suppose now that Child didn't report the abuse for 2 years. Psychologist testifies that Child suffers from post-traumatic stress syndrome & conversion reaction. When an objection is made, you respond, that it is being admitted to explain why Child delayed 2 years before informing anyone of the abuse. Is the testimony admissible?

15. Pediatrician II testifies that Child's injuries were neither accidental nor self-inflicted. There is an objection. Is this testimony admissible?

16. Pediatrician II, who examined Child, testifies to the physical evidence consistent with abuse. Based on these findings & Child's statements to Pediatrician II that Boyfriend committed the acts at issue, Pediatrician II testifies that Child suffered sexual abuse by Boyfriend. An objection is made. Is this testimony admissible?

17. Same facts as #16 above, except now you argue that Child's statements identifying Boyfriend as the one who committed the abuse are admissible under the 803(4) purposes of medical diagnosis and treatment hearsay exception. An objection is made. Is this testimony admissible?