Evidence-Based Practices Applied to Forensic Psychiatry: Introduction to Special Issue

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Evidence-based practice (EBP) has become widely established in many branches of medicine, including psychiatry. In this article, I argue that it is incumbent upon a forensic psychiatrist to examine this concept following a trend in legal decisions that increasingly demand that we base our opinion on a scientific foundation. I will briefly discuss the shortcomings of EBP and how they have been addressed in more recent commentary. I will introduce a number of articles that suggest that we are at a stage where the principles of EBP can be applied to many aspects of forensic psychiatry. [Brief Treatment and Crisis Intervention 8:1–4 (2008)]

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Evidence-Based Practice: Its Application to Forensic Psychiatry

The deepest sin against the human mind is to believe things without evidence. (Thomas Huxley)

How frequently have we all been asked the question “psychiatry is an art, not a science, isn’t it?” in cross-examination? Most of us have a stock answer to this question, generally asked as a preliminary skirmish or minor irritant prior to the real cross-examination. However, the question is a serious one that we should all consider seriously when preparing for court or rendering an expert opinion.

In 1993, the Supreme Court ruled on an important case regarding the admissibility of expert evidence (Daubert v. Merrell Dow Pharmaceuticals, 1993). They cited four factors to assess whether a particular test that was used has a reliable foundation. These factors were the following. First, whether the theory or technique can and has been tested. Second, the analysis addresses whether the theory or technique has been subject to peer review and publication. Third, what is the error or potential rate of error or existence of standards? Finally, the analysis should ask whether this theory or technique has been generally accepted. This greatly refined the general acceptance theory of Frye v. United States (1923) that had been in use up to that time and remains in use in some jurisdictions. In Canada, the standards were set in a case of R v. Mohan (1994). In this case, the four factors that were judged to be important were relevance, necessity in assisting of trier of fact, the absence of any exclusionary rule, and a properly qualified expert. It was noted that any evidence that advanced novel scientific theories or techniques is subject to special scrutiny to determine if it meets the basic threshold of
reliability. The decision emphasized that reliability is an essential characteristic of any evidence and is relevant to determining whether the probative value is overborne by any prejudicial effects. In a later case (R v. J.L-J, 2000), the Supreme Court of Canada explicitly adopted the reasoning of Daubert v. Merrell Dow Pharmaceuticals (1993) in addition to the four factors noted above.

I would argue that this challenges us toward evidence-based practice (EBP) in forensic psychiatry. It clearly suggests that the courts require us to take into consideration all available materials, guided by the available evidence in our field of enquiry.

Sackett, Rosenberg, Gray, Haynes, and Richardson (1996) define evidence-based medicine as follows: “Evidence-based medicine is the conscientious, explicit, and judicious use of current best evidence in making decisions about care of individual patients. The practice of evidence based medicine entails integrating individual clinical expertise with the best available external clinical evidence from systematic usage.” There has been significant dialog in scholarly journals about the pros and cons of this practice (Regehr, Stern, & Shlonsky, 2007). It is pointed out that although academic discussions and scholarly publications about EBP have greatly increased recently, there remains a gap between this discourse and clinical practice (Rosen, 2003). EBP has been criticized as counterintuitive and not based upon the principles of common sense. A great deal of criticism has been based on the fact that, generally speaking, EBP relies on randomized control trials on selected patient groups that may or may not have similarities to the patient with whom you are dealing (Lipman, 2004). It has been criticized as being reductionist, leading to a cookbook approach, ignoring the complexity and context in which it is used. As such, this approach undermines traditional professional practice and ignores the skills of individual practitioners.

However, others have pointed out that the original definition (Sackett et al., 1996) and more recent and expanded definitions (Haynes, Devereux, & Guyatt, 2002; Regehr et al., 2007; Sackett, Strauss, Richardson, Rosenberg, & Haynes, 2000) have addressed many of these concerns. In particular, they have noted that the use of current evidence should be conscientious and explicit and should take into account the wider context of the individual patient or client. Regehr et al. add organizational factors, including consideration of environmental strengths and barriers that may contribute to decision making. This results in a process that blends a number of factors including judicious use of best evidence. Regehr et al. propose the term “evidence-based practice(s)” (p. 8) to incorporate a set of guidelines or standards for implementation in a variety of situations.

Geddes and Carney (2001) point out that a particular challenge in the implementation of evidence-based psychiatry is the fact that this approach is empirical and not tied to any particular school or ideology, such as the biological or psychosocial approach. They propose that this might explain the reluctance of some clinicians who may be invested in a particular approach to adopt EBP in their practice. They accurately predicted that systematic reviews may lead to guidelines which, 10 years later, have become so important in our field. They also predicted that developments in information technology will make it easier to access systematic reviews and relevant information, and this prediction has also proven true to a great extent.

**EBP in Forensic Psychiatry**

In my discussions with the editor of this journal in preparation for this special issue, the topic of EBP in forensic psychiatry evolved. When the matter arose, we were all a little bewildered.
Everybody involved in the discussion was familiar with EBP and its principles but were puzzled at how this could be applied to forensic psychiatry. We decided that we would canvass several experts in the field to attempt to clarify this concept for us.

First, we should address the methods and procedures that are commonly used in forensic psychiatry. Dr Resnick addressed the methods used to address insanity evaluations. Similarly, Dr Nussbaum addressed the methods used to assess fitness competence to stand trial. It is important for us to address the question of whether these theories or techniques satisfy the Daubert standards. For instance, are they subject to peer review and publication, is the potential rate of error known, and are they generally accepted within the community of forensic psychiatrists? Are special tests, such as are discussed in the articles, reliable and valid?

A second issue arises when the role of the forensic psychiatrist in the treatment of the mentally abnormal offender arises. Dr Gary Chaimowitz will address the process of risk management, coupled with a cascading system using best available treatments to address the risks at every stage. Perhaps, our firmest ground is in the prediction of dangerousness, considering the plethora of research in this area. However, Drs Norko and Baranoski address the common and valid criticisms of actuarial prediction, suggesting that the evidence may not necessarily apply to the individual patient sitting before us, and therefore help us in an individual case.

Dr John Bradford and Dr D. Bourget, renowned experts in the area, discuss the application of the principles of EBP to the assessment and treatment of sex offenders. They walk us through a vast array of evidence that applies not only the methods and procedures but also to the management of sex offenders based on a vast array of evidence, some of it contradictory, in this field.

Professors Albert Roberts and Kenneth Yeager, esteemed experts on suicide prevention, present a learned treatise on suicide malpractice. They distill recent legal and medical writing on the topic into a workable evidence-based approach to avoiding litigation and optimal practice.

Finally, Mr Sirotich addresses the complex interaction of the relationship of crime to mental disorders. Mr Saini applies the same rigorous academic scrutiny to access and custody evaluations. Dr Roy O’Shaughnessy walks us through the literature on treatment of troubled youth and helps sort out what is politics and what is science.

Conclusions

In this special issue, I have asked a group of experts in their respective fields to address the applications of the principles of EBP to forensic psychiatry. I have argued that it is important that effective decision making is guided by the best available evidence and that this evidence is to be used conscientiously and judiciously in coming to conclusions. We should always bear in mind the context and complexity of the individual patient as well as practitioner expertise. In certain circumstances, patients’ wishes and goals should be taken in conjunction with the best evidence to produce informed decision making. Forensic psychiatry is a heterogeneous and empirical field and lends itself well to the principles of EBP. I would also like to make a plea for transparency in situations where there is lack of evidence. This lack of evidence should be articulated, and the grounds for any conclusion should be clearly spelled out. It is neither uncommon nor unethical to base conclusions on the practitioner’s experience and expertise as long as this is articulated.

In order to increase the efficacy of EBP, we should encourage the best possible research
in the areas enunciated above. As noted by Geddes and Carney (2001), researchers should become adept at horizon scanning and planning research trials that are relevant to practice. In addition, it is important to emphasize the role of education regarding the state of the art in the field such as that provided by the American Academy of Psychiatry and the Law (AAPL) in their annual review course directed by one of our authors. In addition, the production of guidelines, such as those recently produced by AAPL regarding competence to stand trial and not guilty by reason of insanity, should be applauded. The proliferation of systematic reviews, coupled with the availability and promulgation of publications dedicated to promoting these reviews, hopefully will address the needs of practitioners so as to determine best practices. However, as noted above, in the end it is the individual practitioner who has to judicially and conscientiously interpret the evidence and sometimes the evidence can be contradictory (Sikdar, 1997).

References

Frye v. United States, 293 F. 1013 (1923).