Key Presentation Points and Resource Links

Objectives

(1) Identify four practice-guiding documents for an IBCLC, describing legal and ethical obligations to a lactation patient/client.

Mandatory Practice-Guiding Documents

1. IBLCE Code of Professional Conduct (your “musts”)
2. IBLCE Scope of Practice for IBCLCs (you “must” stay within the fence)
3. IBLCE Clinical Competencies (written as mandatory, but more accurately a list of skill sets)
   Freely downloadable at www.iblce.org
4. Scope of practice, often legislated, written for licensed healthcare providers (MD, RN, RD, etc.)
   Example: Ohio Nursing Laws and Standards of Practice; scope of practice for nurses
5. Policies and procedures (P&P) at your workplace.
   This matters, and probably should be listed first! If your workplace P&P conflict with your practice-guiding documents, you must still comply with the workplace P&P (as a condition of your employment). Try to get bad ones changed ... but follow them until you do.

Voluntary Practice-Guiding Documents

1. ILCA Standards of Practice for IBCLC Lactation Consultants (your “shoulds”)
   (not legislated in the USA; no enforcement mechanism. BUT see note below)

Voluntary-Turned-Mandatory Practice-Guiding Document: Wherever the Code is legislated
In the United States: Int’l Code of Marketing of Breast-milk Substitutes (http://ibfan.org/the-full-code) Ordinarily the Code is voluntary in USA, unless your facility is seeking Baby-Friendly designation, which requires support of the Code. All healthcare providers and their office/systems can choose to follow the Code, making it mandatory for themselves.

(2) Describe the difference between a fact witness and an expert witness in a legal case.

A fact witness is someone who knows something about the case, the parties, and the controversy. An IBCLC can be a fact witness, if, for example, the hospital is sued by a parent, and the IBCLC is called to testify about the care that was provided. An expert witness is called because they provide specialized knowledge, beyond the ken of an ordinary citizen (i.e., the jury or judge), that can shed some light on the case. An expert is allowed to give “opinion testimony” -- the only witness allowed to do so -- where they can describe what, in their expert opinion, would be the outcome if certain factors are present. Other witnesses are not allowed to offer such speculation.

(3) Understand factors preventing an IBCLC from serving as an expert witness in a lawsuit

Experts, even if they are paid by one party to do research and to testify, have no prior connection to the case or parties. This preserves impartiality. If the IBCLC has a prior relationship with the family, whether paid or as a volunteer, their impartiality and credibility as an expert will be challenged.

(4) Explain why it is not a conflict of interest for an expert witness to be compensated for working on a case.

Experts are valued because of their expertise. Just as the lawyers, and even the judge and jurors, are paid to perform their roles, so too is the expert. This fact is not hidden, and often is one of the first questions an expert will be asked while on the stand. Fees are to cover the expert's time, effort, and expertise to review materials, prepare letters, examine evidence, spend time in depositions and the courtroom. Experts are NOT paid to provide specific testimony.

IBCLC's core ethical and legal obligation

“Provide evidence-based information and support so the family can make an informed decision about the parent's and the child's healthcare [in consultation with the primary healthcare provider]”

(the IBCLC informs ... the parent decides).
Experts are hired by the lawyer, not the family. This preserves impartiality. A family may do initial outreach to find an IBCLC willing to work as an expert, but the IBCLC should ask that the family contact the lawyer directly.

Experts must be “qualified” to testify. That is the term courts use for the process of figuring out if they need expert testimony, and if so, whether the IBCLC is able to offer it. Being familiar with all your practice-guiding documents from IBLCE and ILCA, and having an up-to-date resume/curriculum vitae, are important. Being able to explain the significant amount of lactation-specific education and training, in order to sit the IBCLC exam, is critical. An expert’s role is to Always Tell the Lactation Truth!

Ten Rules of Testifying (Barsky, Clinicians in Court, pp 109-118)

No. 1: Tell the truth, the whole truth and nothing but the truth. If you don’t know or can’t recall, say that!
No. 2: Convey professionalism
No. 3: Respect the formalities of the tribunal
No. 4: Speak slowly, loudly and without hesitation
No. 5: Provide clear and concise answers
No. 6: Let the attorney lead the questions
No. 7: Just the facts. Unless you are an expert; then, opinion is allowed.
No. 8: Keep your composure
No. 9: Maintain eye contact
No. 10: Use notes to refresh your memory, if it is allowed by the judge


Some helpful resources about breastfeeding in family law cases:

(1) There are excellent resources on the La Leche League Breastfeeding and the Law pages: http://www.llli.org/law/lawus.html

(2) It is a hard read, but this blog from the Leaky Boob may resonate with the breastfeeding parent: http://theleakyboob.com/2011/02/a-journey-through-breastfeeding-and-visititation/


(5) BreastfeedLA, the California-based coalition, has an excellent Advocacy Toolkit in both English and Spanish. It may be downloaded; there is within it a great page about lactation in divorce cases ... but be sure to click through to the half dozen links on that page to materials especially helpful in lawsuits involving breastfeeding and attachment issues: [http://breastfeedla.org/advocacy/](http://breastfeedla.org/advocacy/)

(6) This toolkit from the Michigan Breastfeeding Network, about breastfeeding and child custody, is a real gem: [https://drive.google.com/file/d/1hs_DVx3dGxZQEZTSXnZ83SJfVw_VEW7/view](https://drive.google.com/file/d/1hs_DVx3dGxZQEZTSXnZ83SJfVw_VEW7/view)

(7) These Attachment Parenting articles are related to custody and divorce: [http://www.attachmentparenting.org/parentingtopics/special-areas/divorce-custody-blendedfamilies](http://www.attachmentparenting.org/parentingtopics/special-areas/divorce-custody-blendedfamilies) and [http://www.attachmentparenting.org/professionals](http://www.attachmentparenting.org/professionals)

(8) This mass media article describes, and links here (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4307616/), to research that suggests overnight visitation disrupts the baby’s ability to attach to the primary caregiver. The researcher advocates for “parenting plans that evolve, where day contact with fathers occurs frequently and regularly, and overnights away from the primary caregiver are minimized in the early years, then are gradually increased to perhaps become equal in the preschool years. ‘If mothers and fathers can be patient, cooperate and take a long view of child development, such evolving plans can work for both children and parents.’” [http://www.newswise.com/articles/overnights-away-from-home-affect-children-s-attachments-u-va-study-shows](http://www.newswise.com/articles/overnights-away-from-home-affect-children-s-attachments-u-va-study-shows)

**Land Acknowledgment.** “In Countries such as New Zealand, Australia, Canada, and among tribal nations in the U.S., it is commonplace, even policy, to open events and gathering by acknowledging the traditional Indigenous inhabitants of that land.” Native-Land.ca, [https://native-land.ca/](https://native-land.ca/), provides a blog and interactive map, for viewing lands used by original inhabitants, before colonialism, displacement, forced migration, and war changed the landscape. Honor Native Land, by US-based advocates, offers explanations for, and examples of, land acknowledgment. [https://usdac.us/nativeland/](https://usdac.us/nativeland/)
Works Consulted


© ECB JD IBCLC FILCA February 2020

Permission for individual use by OLCA Breastfest Conf attendee only

Page 5


© ECB JD IBCLC FILCA February 2020

Permission for individual use by OLCA Breastfest Conf attendee only

Page 6