

THE ESSENTIAL LEGAL NURSE:

EVERY MEDICALLY RELATED CASE SHOULD HAVE ONE

In the United States medically-related cases are some of the most challenging cases a trial attorney can argue in a court of law. Medically-related cases, which may include medical malpractice and personal injury claims, are demanding due to the required medical knowledge and the attorney's lack of formal training in science and medicine. Attorneys who attempt to work on these cases without hiring an expert can labor for hours in vain, trying to understand the most basic premise of their client's case. Often, if the attorney does not fully understand what has occurred in the client's medical or injury history, they cannot accurately represent them in a court of law. Consequently, an attorney's failure to properly try a client's case can lead to liability issues and even disbarment for the inadequately prepared attorney.

To overcome their lack of medical understanding, attorneys can hire medical doctors to act as their consulting expert during medically-related trials. However, the relationship between the medical doctor and the attorney is strained due to high consultant fees, time constraints, and perfunctory reviews of the medical record that may not hold up in court.

To alleviate these problems, licensed nurses started receiving formal training in order to become Legal Nurse Consultants. In the U.S., Legal Nurses are trained analysts that assist the legal community in understanding various medical charts, files, and diagnoses. Additionally, Legal Nurses are well versed in the nursing standards of care, and are accustomed to reviewing the entire medical record to understand the most accurate picture of that particular patient. Just by reading a patient's chart they can often determine if there has been a deviation from the proper standard of care, and relate this information to their attorney-client. The Legal Nurse's ability to effectively communicate their findings orally and in written form can give the attorney-client additional insight into a case allowing them to see the whole picture in a medically-related case. Veronica Castellana et al., *Intro to Legal Nurse Consulting* 26-29 (2d. ed. 2007).

The following article will discuss how Legal Nurses are trained and the roles a Legal Nurse can command in the U.S. Lastly, the question of why Legal Nurses are utilized over other medical experts will be discussed.

TRAINING

Most nurses who enter the legal nurse consulting business are either a registered nurse or licensed practical nurse and have attained professional nursing experience. While formal Legal Nurse training and certification are not required to practice as a Legal Nurse in the U.S., many nurses complete a certification course to remedy their lack of basic legal and report writing knowledge. Lastly, formal Legal Nurse training builds upon a nurse's previous educational and professional experience providing them a more solid

foundation from which to start assisting lawyers. Veronica Castellana & Ryan Sanchez, *Legal Nurse Essentials* 16-23 (3d. ed. 2009).

Nurses wanting to become certified as Legal Nurses may face training programs that can be very intense. In these programs, nurses are taught the fundamentals of contracts, torts, and healthcare law. Additionally, the nurses are educated in legal and medical research methods, which assist the nurses in formulating the basis of their opinions. In the training program, the nurse should learn how to analyze cases from beginning to end, which usually entails working through a real case. Furthermore, the nurses are trained to convey their opinions into written reports that will eventually make up their work product. This work product will also contain case chronologies and demonstrative evidence from software programs designed for the medical and legal professional. These reports must have a specific layout and professional quality to enhance a Legal Nurse's portfolio, as stated by the Legal Nurse Marketing Handbook. Consequently, the Legal Nurse's final work product he/she submits to an attorney-client should meet and exceed any requirements set forth by the attorney or any U.S. court system. Veronica Castellana & Ryan Sanchez, *Report Writing & Case Analysis* 73-91 (3d. ed. 2009), Veronica Castellana & Ryan Sanchez, *The Legal Nurse Marketing Handbook* 189-190 (3d. ed. 2006).

The legal environment in the United States contains rules and regulations. As a result of this, Legal Nurses should receive further training in pertinent American Bar Association Rules of Professional Conduct. Legal Nurses must also take care not to divulge their work product or destroy the attorney-client privilege by disclosing confidential case information. The attorney and Legal Nurse will come into contact with medical records; therefore the Health Insurance Portability and Accountability Act of 1996 (HIPAA) security and privacy standards need to be met. Consequently, Legal Nurses are taught information security principles needed to reduce their liability as well as the liability of their attorney-client. Lastly, nurses will undergo ethics training in order to maintain the integrity of the profession but also to protect the reputation of their business.

ROLES

Once a Legal Nurse has acquired the recommended training, experience, and certification they are then ready to assume many different roles and responsibilities in the career field. A Legal Nurse can act as a testifying expert, fact expert witness or consulting expert for an attorney as an independent consultant. The Legal Nurse can also work in-house at a law firm doing much of the same jobs as an independent Legal Nurse except for testifying as an expert. Tasks can include writing medical interrogatories, attending depositions, conducting interviews with medical professionals, reviewing and analyzing medical records, creating demonstrative evidence, detecting tampering in the medical record, and offering professional nursing opinions from their education, experience and research. Veronica Castellana, *Contracts & Fee Schedules* 18-19 (3d. ed. 2009).

Attorneys can wisely allocate their resources by utilizing the Legal Nurse to fully review the medical record, and then determine which part of the case would require the services of a specialist. For example, if a case involved a spine injury as a result of a negligent business practice, a Legal Nurse should be hired to analyze the medical record and then decide if a neurosurgeon should be called to testify in a court of law. The medical doctor can testify as to what the injury, healing method and recovery time would be for the injury. As a result, the Legal Nurse would eliminate the need for the neurosurgeon to review the entire case from beginning to end, creating a significant savings for the attorney. The surgeon would be needed only for his pertinent review of the injury, spine surgery and the time it takes if they are needed to testify in court.

Working for an attorney or at a law firm is not the only option available for a Legal Nurse in the United States. The insurance industry is another area where the use of Legal Nurses can be found. Many times an insurance company will hire a Legal Nurse to analyze a claimant's medical record in order to substantiate claims and adjust judgments. Moreover, Legal Nurses will validate charges, detect fraud, and perform other investigative tasks where the analysis of medical files and documents requires both legal and medical knowledge. Veronica Castellana et al., *The Certified Legal Nurse Investigator* 66-75 (2d. ed. 2007).

A Legal Nurse can also be part of a risk management team for a hospital. In this capacity, the Legal Nurse could provide risk analysis, policy and procedure formulation for a hospital's risk management department. Often, the Legal Nurse will review incident reports involving hospital procedures and resolve any procedural discrepancies with new directives. As an example, Legal Nurses can create a new process in the way surgical procedures should be performed in order to reduce the risk of mistakes from occurring. These services can save hospitals thousands, if not millions, of dollars by preventing future litigation.

WHY THE LEGAL NURSE?

The use of a qualified consultant or expert is one of the areas of the legal practice that cannot be downgraded, although it is usually one of the most expensive costs during case preparation and trial. Many times, an attorney would hire a medical doctor to analyze all case medical records to assist the attorney to provide counsel to the client. Most cases that involve a medical doctor as an expert witness include car accidents, slip and falls, and straightforward medical malpractice claims. Consequently, the judgments in these cases would not justify using a medical doctor as an expert witness when they could be charging \$200-\$500 dollars an hour. From a financial standpoint, it does not make sense to utilize a doctor as a specialist when a Legal Nurse Consultant will do a more thorough analysis for a lesser cost.

In order to preserve the use of qualified expert consultants while at the same time lower their case expenditures, attorneys should utilize Legal Nurses because of their education, training, experience, and certifications. Legal Nurses are able to provide competent advice to the attorney, as adequate as a medical doctor, but at a substantially

lower cost. On average, Legal Nurses will usually charge between \$100-\$150 an hour to analyze the medical aspect of a case and provide feedback to the attorney. If a Legal Nurse runs into a very complicated medical issue, she/he can recommend a medical doctor to consult for that issue only. This reduces attorney expenditures because the medical doctor is not analyzing the entire case, they will testify or consult only if the case requires it or if the case proceeds to trial. Veronica Castellana & Ryan Sanchez, *Introduction to Legal Nurse Consulting* 40-42 (3d. ed. 2009).

The Legal Nurse Consultant is quickly becoming an indispensable part of the legal team where medical records are involved. Their invaluable knowledge of what the medical record conveys about the patient-client will prove their worth many times over in the future.

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