



## **Botched Laparoscopic Cholecystectomy**

I will tell you a story today about a man who went into the operating room for a simple procedure and then died a horrible death. This is Pat Iyer with *Iyer's Insights*, one of the twice weekly shows of Legal Nurse Podcast.

Mr. King's (not his real name) surgeon went to a weekend course and learned how to do a laparoscopic cholecystectomy on a pig. He enthusiastically returned to his practice to begin using this surgical method on his patients.

One of his first patients was Mr. King. Surgery did not go well, and Mr. King was left with a tract that connected his gall bladder bed with his abdominal wall. The botched laparoscopic cholecystectomy resulted in bile draining into his abdomen and onto his skin. He developed a painful inflammation of his abdomen (peritonitis), and wound infections. Mr. King spent the last three months of his life (September 9 to December 2, 1985) in the hospital, dying inch by inch.

When Mr. King's attorney called me, he requested that I prepare a summary of the medical records. They were voluminous and filled with medical terms charted by his doctors, nurses, and therapists. Mr. King's attorney explained that under the rules of evidence, a healthcare expert could prepare a summary of medical records (Federal Rule of Evidence Rules 1006 and 702.)

I did not realize this report would change my life. In the previous podcast, 348, I referred to the role of the expert fact witness. This was the first such case I summarized.

Let's pretend for the moment that you are hired as an expert fact witness.

In the report, I focused on five major areas: intramuscular injections, intravenous and intra-arterial sticks, nasogastric tube insertions, suctioning, and comments Mr. King made. Here are the highlights from Mr. King's last 3 months of life.

### **Injections**

Although today many more medications are given intravenously, in Mr. King's

time, intramuscular injections were common. Mr. King had 256 injections into his arms, legs, buttocks and abdomen, including 90 Heparin injections into his abdomen.

### **Intravenous and Intra-arterial Sticks**

Mr. King underwent 8 insertions of central intravenous lines. As an expert fact witness, you would explain in your report that the skin is numbed with Lidocaine, but the patient still feels the pressure as the doctor pushes the needle through the skin.

Mr. King removed 3 of his central lines. He also underwent 3 insertions of needles into his femoral vein in his groin. He was stuck in his radial artery and femoral artery for blood gases. Another point you'd share in your report is that the artery is more sensitive to pain because it has nerves close to it, so arterial sticks are more painful.

### **Nasogastric Tube Insertions**

If you have ever inserted a nasogastric tube, you know that insertions of nasogastric tubes are uncomfortable because the tube stimulates the gag reflex. As the tube is irrigated to keep it open, the patient is aware of the fluid passing through the tube. The tube irritates the nose and back of the throat. Mr. King found his nasogastric tube distressful. He removed it on 4 occasions. It was reinserted each time.

Mr. King was not permitted to eat or drink for 83 of the 89 days he was in the hospital. He lost 25 pounds in 3 months.

### **Suctioning**

After the botched laparoscopic cholecystectomy, Mr. King spent 5 periods on the ventilator. He was suctioned to remove the buildup secretions in his lungs. Patients find suctioning uncomfortable because the suction catheter stimulates the gag reflex, causes the patient to not be able to breathe while the tube is in the airways, and creates a gasping, coughing reaction. You'd explain this point in your expert fact witness report.

Mr. King was conscious for most of the time he was on the ventilator. His sleep was interrupted every 1-2 hours for his vital signs to be taken around the clock.

Patients who cannot sleep for 90 minutes at a stretch begin to show the accumulation of fatigue and may become confused and hallucinate. Mr. King became confused for periods when he had the least amount of sleep.

### **Comments**

I finished the report by quoting from statements Mr. King made to his nurses and doctors. Each quote had a date. His suffering was exemplified by comments in which he begged to go home, asked for his dog, and expressed his fear he was going to die. He suffered up to the day he died when he pushed away the nurse who was trying to suction him, and he pushed off his oxygen mask.

Mr. King's attorney asked me to come to court to explain his suffering. I testified based on what was in my report. When I glanced over at Mr. King's wife and daughter, I saw tears pouring down their faces. I realized the power of this role. Mr. King's family was awarded a substantial amount by the jury for his pain and suffering as a result of the botched laparoscopic cholecystectomy.

Mr. King's attorney gave me the opportunity to assist in this case in a unique role. Over the next 25 years, I provided this service over 500 times. This attorney had the foresight to recognize the need to bring in a nurse to explain the medical records and what the patient went through. I am awed by the number of ways people can be injured and the suffering that results.



Before I continue, let me circle back to the idea I've mentioned, which is the role of the LNC in summarizing medical records to detail pain and suffering. Are you curious about this role and wonder if it is right for you? I have free training for you that answers that question: *The Role of the Expert Fact Witness: How You and Your Client Can Benefit*. In my new webinar, I will share with you:

- What this role is – and what it is not
- What kind of cases benefit from expert fact witness testimony
- How to explain the expert fact witness role to attorneys

Click the button in the show notes of [podcast.legalnursebusiness.com](http://podcast.legalnursebusiness.com) to watch this free training. Here is a short link for you: <http://LNC.tips/efwrole>. If you are reading this transcript, the link is [here](#). And if you want to receive our transcripts, you may request them at this link: <http://LNC.tips/transcripts>.

Earlier in this podcast I asked you to imagine you are serving an attorney as an expert fact witness.

Would you like to know how to make yourself the LNC of choice for your client?

Here are my best tips on how to shine as an expert fact witness, expert witness or consultant.

These are critical performance elements that will endear you to an attorney.

### **1. Calls with attorney: be responsive**

Call the attorney's office to acknowledge you got the materials that were sent either through email or the mail. This eases the mind of the support staff who assembled the materials. It also gives you an opportunity to speak with the attorney if you have not already done so.

Promptly return the attorney's or paralegal's calls. Attorneys worry if they do not hear from you. They may be facing a deadline. Their delight when they first asked for your help begins to wane when they can't reach you.

### **2. Billing: Be prompt and reasonable**

Promptly submit invoices and do not allow many hours to accumulate. Smaller invoices are easier to pay than large ones.

Your billing should be reasonable. Based on years of experience and understanding of medical records, do not spend excessive time reviewing materials. The new LNC should understand that a learning curve is part of working with attorneys and you cannot bill for it. As you gain more experience, you learn that you do not have to read every page of the medical record and can scan other materials.

### **3. Your Report**

Attorneys value reports that are thoughtful, thorough, hit the most important points, well written, and proofread. Focus on the needs of the attorney who hired you and be exquisitely clear who the attorney represents.

### **4. Meet deadlines**

Take a lesson from Zappos Shoes. This shoe company tells their customers that their order will be shipped in a few days. The employees then routinely ship the shoes overnight. What does buying shoes have to do with supplying reports to attorneys? The best report in the world is of no value if you turn it in too late. The attentive LNC submits a report well before it is due. If you promise the report will be done by a certain date, and get it done sooner, everyone is delighted. The attorney will have a chance to look at the report and give the expert feedback for changes. The attorney will feel less stress over the deadline.

## **5. Be organized and prepared**

Your materials are well organized, and you can find a document within seconds. This is an asset that helps you throughout the case, from record review, report preparation, deposition preparation and testimony, and trial preparation and testimony.

Attorneys rely on LNCs who are thoroughly familiar with their reports and the materials before their deposition begins. At the deposition, the expert sticks to her opinion, steps around traps, and does not allow herself to be bulldozed by the attorney.

At trial, the expert is thoroughly prepared, knows the facts, clearly articulates her opinions, looks at the jury when testifying, and keeps her composure when being cross examined.

LNCs and experts who master these points will shine, get more cases, and make more money.

Check out our training on the role of the expert fact witness by going to the show notes of this podcast. You'll get valuable tips on how to help your plaintiff attorney clients maximize their recovery for their clients.

Do you have lots of questions about being a legal nurse consultant? Are you wondering how to get clients, grow and manage a business, and dig into medical records? Do you feel a bit lost?

I've got a phenomenal resource for you just waiting on [LegalNurseBusiness.com](http://LegalNurseBusiness.com).

My online training and books are designed to help you discover ways to strengthen your skills and business. Check them out at [legalnursebusiness.com](http://legalnursebusiness.com).

Could you use a monthly boost of knowledge to keep your skills sharp? Are you a lifelong learner who enjoys the chance to keep expanding your knowledge? LNCEU.com gives you two online trainings every month to build your LNC business. Look at the options at [LNCEU.com](http://LNCEU.com) and start right away in the comfort of your home.

Are you interested in building your LNC business by getting more clients, making more money and avoiding expensive mistakes? The [LNCAcademy.com](http://LNCAcademy.com) is the coaching program I offer to a select number of LNCs. You get my personal attention and mentorship so that you can excel and build a solid foundation for your LNC practice. Get all the details at [LNCAcademy.com](http://LNCAcademy.com).