Do you want to avoid traps that will ruin your expert witness practice? Inexperienced experts may be completely oblivious to these traps. Be wary and learn the rules.

I’ve seen expert witnesses make these errors, not even realizing in some cases the damaging impact of their actions. They lost cases and income because of these mistakes.

This is Pat Iyer with *Iyer’s Insights*, one of the twice weekly shows of Legal Nurse Podcast.

1. **Quickly Respond to a Case Inquiry**

   “Would you like to review this case?” You receive a voice mail or email asking if you are interested in reviewing a case as an expert witness. How quickly you react will determine to a great deal whether you get the case. How soon do you respond to the request? There is only one answer from the standpoint of the attorney – the sooner the better.

   Yes, attorneys recognize you have emergencies, take vacations, but in today’s instant access world, if you do not respond as quickly as possible, the attorney will contact someone else. A response within 24 hours is ideal. The request for your services will usually evaporate if you do not quickly respond.

2. **Don’t Take a Case Outside of Your Area of Expertise**

   Medicine and nursing are highly specialized and separate disciplines. Increasingly the courts recognize the distinctions and will allow an expert’s credentials to be challenged if there is not a good match between the defendant’s background and the expert’s background.
What do I mean by that? For example, a plaintiff attorney told me he was planning to use an emergency department physician to testify about the standard of care of an emergency department nurse practitioner. When I suggested he retain an emergency department nurse practitioner, he rejected my advice. Then he sheepishly called me after the opposing counsel was successful in challenging the use of a doctor to testify against a nurse.

Make sure you have direct, recent, firsthand and extensive experience in the area that is the subject of the lawsuit.

3. Don’t Make a Causation Statement as a Nurse

Nursing expert witnesses focus on the standard of nursing care and how it was followed or deviated from. Physician expert witnesses focus on the standard of medical care and how it was followed or deviated from.

In addition, physician experts are permitted to address causation. The physician is allowed to determine if the deviations (if any) from the standard of care caused the patient to suffer certain consequences. In almost every jurisdiction, nursing expert witnesses are allowed very little latitude when it comes to making causation statements. They are subjected to attacks if they try to. If you have questions about what you can and cannot address, please contact the attorney.

4. Don’t Fabricate the Standard of Care

“Of course,” you think, “I would never do that.” An expert who has an idiosyncratic interpretation of the standard of care will be attacked. Sometimes expert hope their confident, authoritative manner will convince opposing counsel. However, as an expert witness, you are expected to understand the standard of care. Back up your opinions with standards found in nursing literature, regulations, textbooks, and Joint Commission standards.

I know of a nursing expert who testified as a defense expert in a case when the defendant nurse gave a 10-fold overdose of insulin. The expert defended her
actions by stating that if the nurse thought the dose was correct, she adhered to the standard of care.

No, that is not a correct interpretation of adhering to the standard of care.

5. **Meet Deadlines**

A lawsuit has a series of predictable deadlines set by a judge. The court system moves step by step through this process, giving attorneys deadlines to then pass onto their experts. There are direct consequences if the attorney does not produce an expert report by the deadline.

For example, a defendant could be dismissed from a suit if the plaintiff attorney is unable to produce an expert report that describes how that person was negligent.

Attorneys get intensely worried about their experts being late with reports. When I supplied experts, I received calls from attorneys who could not reach their experts to ask questions or confirm the expert would turn in the report on time.

Don’t worry your clients. Be prompt and better yet, early in doing your reports.

Let me break into the discussion at this point to share a resource with you that I know is vital to expert witnesses. Many experts are anxious about testifying. I saw this so frequently that I brought in two experienced expert witnesses to provide a one-hour training called, “Take the Terror out of Testifying”.

Does the idea of testifying at a deposition or trial give you butterflies? Many legal nurse consultants fear giving deposition or trial testimony. In this one-hour training, two experienced expert witnesses share lessons learned from the hot seat.

- Show you effective ways to deliver testimony while avoiding common pitfalls
• Explain successful alternate strategies for handling cross examination including how to recognize and counter common legal maneuverings
• Give you greater confidence about testifying
• Help you keep from blurring out something you shouldn’t
• Show you how to effectively present your CV to prevent mischaracterization of your experience and accomplishments

Get this training at this link: http://LNC.tips/terror and use the code listened to get a 25% discount. Now let’s return to the show.

6. Don’t be an Expert if You Have Skeletons in the Closet

Have you

• Been disciplined by the board of nursing or fired?
• Spent time in prison after being convicted of a felony?
• Lost your nursing license for drug offenses?
• Had to pay a settlement after being convicted of malpractice?
• Been convicted of a Driving While Under the Influence charge?

Can you take the position that your criminal past is not the business of the attorneys? Hardly. Be aware that these activities will come to light and your credibility can be destroyed.

In a case in which I was the defense expert witness, the plaintiff’s expert used her physician husband’s prescription pad to write orders 22 times for her own use. The judge allowed the jury to hear about this offense. The jury was NOT impressed with this expert.

7. Be Consistent in Your Opinions

Remember that everything you have testified about or written reports about is fair game. Opposing counsel may go through the trouble of getting your prior
depositions. It is easy to accomplish. Both plaintiff and defense attorneys have data banks of expert depositions. Expert reports may be harder to obtain.

You are sitting in a deposition when the opposing counsel starts asking about other cases you have reviewed on the same issue. He becomes eager to get his hands on these materials and asks you to supply them.

Don’t be so quick to agree. First, pause. Allow your client to enter an objection, or to make a statement like “I’ll take it under advisement.” You should be very concerned about the need to turn over reports or transcripts. This tactic is a fishing expedition, in which the opposing counsel is trying to find a case that is identical to the one you reviewed, and in which your opinion was opposite to the one you’ve now taken.

Cases that look the same on the surface may have different facts or circumstances that change your opinion. If pushed further, let the attorney know it is going to take a long time (and will be expensive to the requesting attorney) if you have to produce whatever it is he is asking for. Talk to your client after the deposition about the request.

But most importantly, recognize that your opinions have to be based on the standard of care. When you vary them according to who is paying you, your credibility will be destroyed.

**8. Be Thoroughly Prepared for a Deposition or Trial**

Testifying is a serious affair. The attorney asking your questions has probably spent hours preparing - reading and rereading your report, writing notes in the margin, underlining words, underlining sentences, gathering data about you, your website, your prior testimony, and anything else that can be used to attack you.

You may testify months or years after you reviewed the patient’s medical records. The key to successful testifying is *preparation, preparation, preparation*. Walk into the room at the beginning of your testimony having a firm grasp of the facts.
Careful and thorough review will make both you and your client feel more relaxed in what is undoubtedly a tense situation.

Know where to find information in the record. You and the client will do better if you can minimize sorting through paper to find information. Nonetheless, you will be asked questions that you cannot answer without looking at the material in front of you.

Don’t be intimidated by a questioning such as, “What? You can’t remember?” Look at the records. It is not a memory contest. You are permitted to look at the depositions, medical records, and other documents you brought.

Opposing counsel wants to shake you. When you use an answer such as the one I will share with you, you may cut short the search through the records: “I can get you that answer if you’d like me to take the time to look through these records.” Sometimes attorneys will respond, “take as much time as you need”. But in most situations, they will move on to other questions.

Avoid these testifying traps that ruin your expert witness practice.

Don’t forget to purchase our inexpensive testifying training so you become more comfortable in the courtroom. Get this training at this link: http://LNC.tips/terror and use the code listened to get a 25% discount.

Check out the webinars, teleseminars, courses and books at legalnursebusiness.com. Expand your LNC skills with our resources.

Explore coaching with Pat Iyer at LNCAcademy.com to get more clients, make more money and avoid expensive mistakes.

Invest in the monthly webinars at LNCEU.com for 2 webinars each month designed to deepen your knowledge and skills.