LNP 281

Killed by a Tree

In LNP 280, Amberly Lago so clearly explained the agony she experienced after the catastrophic accident that almost cost her the use of her leg. Amberly’s story gives a glimpse into an extraordinary woman.

This is Pat Iyer with Iyer’s Insights. I invited Amberly onto the show because her story is so compelling. She remains cheerful in the face of persistent, chronic pain from complex regional pain syndrome.

I met Amberly through a conference I attended for authors. Her legal case was resolved before I met her.

Had I been part of the litigation process, I would have suggested to Amberly’s attorney that he hire me to summarize her medical records as an expert fact witness.

The expert fact witness summarizes medical records of people who have suffered catastrophic injuries. I completed over 500 expert fact witness reports. I am offering a free online training about this challenging and rewarding role. Join me by watching our free online training, The Role of the Expert Fact Witness: How You and Your Client Benefit. Go to the show notes at podcast.legalnursebusiness.com for a button to click so you can register for this program.

Let me explain the role by telling you the story of Mr. and Mrs. Gorman. In this case, I served as an expert fact witness in a case involving an 80-foot tree that hit a car, killing the wife and paralyzing the husband. My report helped to settle the case.

The facts of the expert fact witness case

Mr. and Mrs. Edward Gorman and their children’s lives were forever altered during a drive in New Jersey. Mr. Gorman was driving; Pam was in the front passenger seat and the children were in the rear seat of the car. Mr. Gorman recalls
seeing a flash. An eighty-foot tree on the right side of the road struck the Jeep, took down power lines, and came to rest across the width of the highway.

The tree hit the roof right above where Pam was sitting. The roof of the vehicle was crushed, and the windows were shattered. Mr. Gorman’s car stopped 20 feet away.

Mrs. Gorman was removed from the car; she was pronounced dead at the scene. The police found Mr. Gorman lying on the wet pavement. The Belvidere Squad described Mr. Gorman as lying on his back on the road. He was alert and oriented.

The patient had pain in his neck, between his shoulder blades and in the middle of his back. He rated the pain as 10 (out of possible 10 with 10 being the worst possible pain.) Additionally, Mr. Gorman had a weak grip and decreased feeling in his arms.

The pain in his back got worse when his back was touched. He had intermittent feeling in his legs when he was first seen by the Buchanan Squad. Enroute to the hospital the patient lost all feeling in his legs and from his nipple level down.

At the hospital, diagnostic testing showed soft tissue swelling in the patient’s neck. There was a burst fracture of the C7 vertebral body. The fracture likely included the left C6 pedicle of the spine. Fragments of bone were pushed into the spinal cord narrowing the cord by at least 50%.

**Expert Fact Witness Report**

Mr. Gorman’s attorney asked me as an expert fact witness to summarize the medical records that filled more than a dozen 3-inch binders. Forty-one year-old Mr. Gorman’s life was completely changed by the death of his wife and his permanent paralysis. Over the next several years, Mr. Gorman suffered from pain, anxiety, depression, repeated urinary tract infections, bladder stones, and pressure ulcers, to name a few of his problems.
I created a detailed narrative report and exhibits identifying his problems, dimensions of pressures sores, and need for medications. I was prepared to testify about Mr. Gorman’s treatment and symptoms had the case gone to court.

The suit filed against the New Jersey Department of Transportation under the theory that they were negligent in maintaining the trees. The case was resolved in 2011. The State agreed to pay $4.75 million.

As soon as the Gorman case was settled, the Supreme Court of New Jersey held in a death case based on the same negligent maintenance theory that the State was not liable for a failure to inspect or for a negligent inspection.

“Sometimes timing is everything”, Mr. Gorman’s attorney said.

**Use of Expert Fact Witness Summaries**

In this case, the attorney asked me to summarize Mr. Gorman’s pain and suffering. This type of report is usually prepared by legal nurse consultants functioning as expert fact witnesses on behalf of the patient and is particularly helpful in malpractice and personal injury cases. They are effective in the situations shown below:

1. There are extensive medical records covering a long admission to the hospital or several admissions over a number of months or years.
2. The plaintiff is unable to describe his or her own pain and suffering due to death, disability, or lack of communication skill or memory.
3. The plaintiff experienced marked pain, has required extensive narcotic or analgesic medication, multiple medical and nursing interventions, surgical procedures, complications, noxious sensations, or emotional suffering.
4. The attorney wants the nurse to educate the jury about the plaintiff’s unpleasant experiences.
5. The attorney wants to build maximum impact by having a nurse testify to the patient’s pain and suffering rather than putting the patient on the stand and risk having the plaintiff being perceived as whining.

The report provides the attorney with a comprehensive overview of the contents of the medical record, with a specific focus on the problems the patient experienced.
The summary is useful for the liability witnesses in the case, who may use it to refresh their recollection about the medical events when preparing for deposition or trial.

The summary may reduce the need and cost of the liability experts to perform a complete review of all of the medical records. The report is allowed under the Federal Rules of Evidence 1006, often echoed in state rules, when there are voluminous or difficult to understand records.

When prepared for the defense attorney, the summary of the medical record reviews the plaintiff’s claims in the complaint, deposition, expert witness reports, or pain and suffering summary. The defense expert fact witness can be used to evaluate the medical documentation and refutes the plaintiff’s exaggerations.

Be sure to sign up for our free online training taking place on April 29 and 30, 2019 about the role of the expert fact witness. You’ll be able to get the recording if you are unable to attend the live event. I am offering training to legal nurse consultants who want to assume this rewarding role. Be sure to check it out by going to the button on the show notes for this podcast on podcast.legalnursebusiness.com.

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