



### LNP 315

## Expert Witness Frequently Asked Questions

Before I start today's podcast, I want to share the exciting news that I am assembling a mastermind for experienced legal nurse consultants. This group is designed to elevate each member's business, to provide support, new ideas and a community for those who are building their businesses.

If you'd like to find out if you are qualified to be a member of this group, contact me at [patiyer@legalnursebusiness.com](mailto:patiyer@legalnursebusiness.com).

Have you listened to medical malpractice attorney Heather Hansen discuss the crucial role of experts? Be sure to listen to Legal Nurse Podcast 314.

You've gotten a case as a nursing expert witness. Now what? What are your expert witness opinions?

This is Pat Iyer with Iyer's Insights, one of the twice weekly shows of Legal Nurse Podcast. I spent 20 years testifying as an expert witness, and I've trained hundreds of healthcare professionals how to excel in this challenging and rewarding role. Here are questions experts often asked me.

### **What do I do when the records are a mess?**

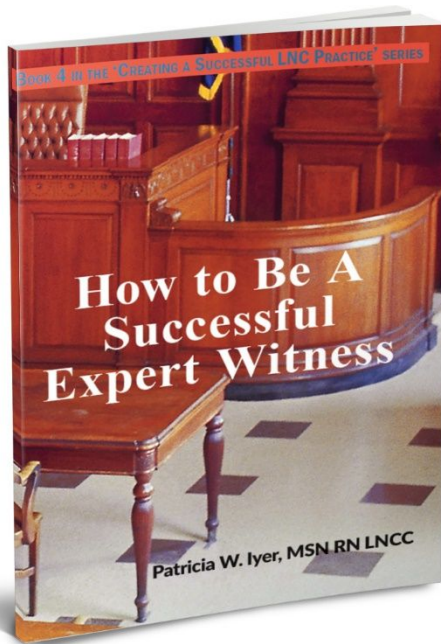
It is difficult to review records that are not organized. Make every effort to put the records together in a logical way to facilitate your review. Placing hole punched and organized paper medical records in binders makes it easier to complete your review. When you receive electronic records, clearly label them and sort into sections.

### **Can I write on the paper records?**

Please don't. Underlining or highlighting on records you received for review may be questioned at your deposition. Also, if you do not find you can help the attorney and are asked to send the records back, the copy you wrote on now becomes unusable if the attorney decides to have another expert review the case.

## **How do I get the incident report and the facility's policies?**

If the suit has not yet been filed, the state rules may not permit access to these documents. Some states protect incident reports from discovery, even after a suit has been filed. Be sure to let the attorney know what material you wish to have for your nursing expert review.



Let's stop for a moment. This is Pat Iyer. There is a lot at stake in medical malpractice cases. You want to do your best. I put together a book specifically for LNCs who are expert witnesses or considering taking on this rewarding role. It is called ***How to be a Successful Expert Witness.***

Use this book to read through, refer to, and consult to gain a greater understanding of the role of the expert witness. I urge you to approach being an expert on a case as a tremendous opportunity and a huge responsibility. Engage in your work with professionalism and commitment. The attorney and his client are counting on you.

This book draws on my experiences both as an expert witness and one who has trained hundreds of experts – nurses, physicians, and a variety of healthcare professionals. Order your copy at <http://LNC.tips/expertwitness> and use the code listened to get a 25% discount on this book.

Now let's return to the show.

## **Why do I need to see the complaint?**

The nursing expert should know what the plaintiff attorney alleged occurred in this case. This will help you focus the review.

## **Why do I need to see the opposing expert's report?**

The plaintiff's nursing expert should focus on meaningful deviations, not inconsequential ones and is typically written before the defense expert's report (in states that require written reports).

It is essential to understand the opposing side's expert's position in order to determine if you disagree or disagree with this person's analysis. If you are a defense expert, you'll address the plaintiff expert's allegations, refuting them with citations to depositions or medical records.

### **When do I offer an opinion?**

Read all the *pertinent* documents before you offer an opinion. It is rare that a nursing expert witness must read every page of a medical record, and most attorneys would not be willing to pay for the time to do so. It is up to the expert to know what to look for in the material.

You may get into the materials and find that there are pages missing. Maybe somebody copied every other page in the medical record. Maybe somebody put medical records in a box under a secretary's desk and forgot that they were part of what needed to go out to the expert. Maybe someone forgot to scan important records.

It is appropriate to call the attorney's secretary or paralegal and let that person know what you are missing. This type of request does not have to be presented to the attorney, unless the attorney has no staff. It is your job to make sure that everything is complete before offering an expert witness opinion and talking to the attorney about the pros and cons.

### **What do I do after I've reviewed the materials?**

Typically, the next thing that happens is that you have a phone call with the attorney to talk about the initial conclusions after reviewing all the relevant information. In the discussion after you review the case, demonstrate your clinical experience, education, and expertise.

Sometimes you will be reporting to a paralegal or legal nurse consultant, but more typically you will be commenting directly to the attorney.

It's your job to look at it objectively, to see the pros and the cons and to be able to help the plaintiff attorney anticipate what the defense is going to say about this case.

Going forward with a weak case does a disservice to all the parties, so it's important that you express expert witness opinions with the strength of your convictions.

### **What do I do after I this call?**

If your opinion is favorable, what you do next depends on your state and the stage of the suit, as well as whose side retained your services. If required by the state, as a plaintiff's expert, you may be asked to sign an affidavit of merit or write a report.

A defense expert may also be asked to prepare a report. Preparation of a report may be postponed until the discovery has proceeded further. In some states, the attorney discusses your opinions with you and prepares a statement of your position. Do NOT put anything in writing with the conclusions of your nursing expert review unless asked to do so by the attorney.

### **How should I structure my report?**

The report should be prepared on your letterhead which includes your name, address, phone number and email address. It should be set up as a business letter and contain:

- The date
- The name and address of the attorney who retained your services
- The name of the patient
- A summary of the medical facts
- A description of how the nurse adhered to the standard of care (if the report is written for the defense), or deviated from the standards of care (if the expert was retained by the plaintiff attorney).

Refer to the medical records and depositions to support your opinion.

**May I comment in my report and testimony on the physician, as well as the nursing standard of care?**

Although nurses are the preferred professionals to testify as to the nursing standards of care, the nursing expert witness is normally prevented from testifying about the medical standard of care. Courts usually hold that a nurse is not qualified to render an opinion about whether a physician is guilty of medical malpractice.

For this reason, the nursing expert witness should refrain from commenting about the medical standard of care. Your report, in the summary of medical events section, should simply detail the chain of events that was involved in the case.

**May I state in my nursing expert witness review report that the actions of the nurse caused the patient to be injured or die as a result of an error?**

No, a nurse should ordinarily not be used to establish or refute causation.

**What should I be checking for when I proofread the report?**

It is essential to proofread the report before it is supplied to the attorney. When possible, allow a period to transpire before picking up the report to proofread. This enables you to see the material from a fresh perspective. Make sure names, dates, and details are correct. Be sure to look for words which the spell checker determines are correct but are incorrect within the context of the report.

**What do I do once I have proofread and finalized the report?**

Make a copy of the report and send the original and your resume to the attorney. Hold onto the medical records unless asked to either return them to the attorney or dispose of them.

The nursing expert witness role is challenging and complex. Get more details about nursing expert witnesses cases by ordering a copy of **How to Be a Successful Expert Witness**. Learn the critical skills needed to be a terrific expert.

Get the book by going to the show notes for this podcast on [podcast.legalnursebusiness.com](http://podcast.legalnursebusiness.com).

You'll find the show notes on [podcast.legalnursebusiness.com](http://podcast.legalnursebusiness.com) or on our new mobile app, biz.edu. Get the app at [legalnursebusiness.com/bizedu](http://legalnursebusiness.com/bizedu).

The app puts all our content in the palm of your hand: our free webinars, blogs, podcasts, courses, reports and videos. Get the app at [legalnursebusiness.com/bizedu](http://legalnursebusiness.com/bizedu). It is available for iPhone and Android phones.

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 LNCs discover ways to strengthen their skills and businesses. Check them out at [legalnursebusiness.com](http://legalnursebusiness.com).

Many of us are lifelong learners who enjoy the chance to keep expanding our knowledge. Just like the book of the month clubs, [LNCEU.com](http://LNCEU.com) gives you two online trainings every month. We have a yearly payment plan that saves you over \$50 compared to paying monthly, and each program is hugely discounted. Look at the options at [LNCEU.com](http://LNCEU.com).

The [LNC Academy.com](http://LNC Academy.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 [LNC Academy.com](http://LNC Academy.com).