



## Who we are...

Since 1989, Med League Support Services, Inc. has aided attorneys in 38 states. We perform these services:

- Analyze medical records
- Develop case chronologies
- Screen malpractice cases for merit
- Prepare PowerPoint presentations for settlement negotiations or trial
- Locate nursing & physician experts
- Prepare medical summaries & reports, including pain and suffering/expert fact witness
- Transcribe handwriting
- Prepare life care plans
- Prepare demonstrative evidence
- Prepare medical illustrations
- Assist with preparation of demand letters and settlement brochures

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## The Value of Expert Fact Witness Reports by Pat Iyer

The expert fact witness is a healthcare professional who is retained to explain the medical records to the jury. This role has been in existence for at least 25 years, but has gained increasing acceptance after a 2002 decision of Judge Sabatino of Mercer County Court, New Jersey. Gerald Stockman, Esq. presented a nurse to summarize the medical records of a woman who

died of lung cancer. The case was based on an allegation of a delay in diagnosis of lung cancer. The defense objected to the use of a witness for this purpose. Judge Sabatino ruled that this was acceptable. The judge found that the nurse's singular presentation was an efficient and less

costly alternative and was "also apt to be more cogent than piecemeal accounts from each doctor." This case is Heinzerling 359 NJ Super 1 Appellate Division; it settled before trial.

Judge Sabatino made reference to Rule 1006 of the Federal Rules of Evidence, which permits

the use of summaries. The rule provides that when there are voluminous writings, recordings or photographs which cannot be conveniently examined in court, that a chart, summary or calculation may be presented.

The expert fact witness is qualified to perform this role by virtue of experience in reviewing and interpreting medical records, which is part of

the requirements of working as a healthcare professional. When selecting such an expert, look for the person who has excellent oral and written communication skills, and the ability to be analytical, well organized, and convey complex material in a clear manner. Based on medical training and experience, the expert is able to

make conclusions about sensations associated with medical procedures. For example, nursing expert fact witnesses know that certain procedures cause pain, such as insertion of Foley catheters, debridements, and wet to dry dressing changes. Other procedures cause unpleasant sensations, such as suctioning or irrigation of a nasogastric tube. The expert fact witness uses



this information in analyzing records and in preparing the report.

The expert fact witness is able to read medication administration records to calculate the doses of pain medication given to the patient, and to review the laboratory records to determine how often and at what time blood specimens were obtained. Nursing notes detail how the patient responded to painful stimulation, and reveal the factors that give rise to helplessness. For example, many patients find it very stressful to be on a ventilator, with their hands tied down, and unable to speak. The medical record may refer to agitation, fighting or bucking the ventilator.

There are typical types of cases in which such a role is helpful. A common one is the case of the patient who had a period of pain and suffering prior to death. Another is the patient who has suffered extensive injuries, such as burns, paralysis, multiple fractures, head trauma, surgical misadventures, drug reactions, delay in diagnosis of cancer, and so on. The role is also useful when the patient has a language barrier or other communication barriers, such as may occur in children and the elderly. The role is NOT useful when the patient was killed instantly, when there are no medical records, or the patient had a brief period of pain and suffering before going into a coma and dying. The expert fact witness needs to provide an objective, detailed, and balanced summary of the medical record.

Some plaintiff attorneys want to avoid putting the patient on the stand for fear the patient will be seen as a whiner, or as a stoic. They prefer to have an expert fact witness recount the details of care, and the symptoms the patient experienced, complete with illustrations of key aspects of the care.

In my experience, many of these cases settle before trial, in part because the defense is reluctant to have the jury truly understand the pain and suffering experienced by the plaintiff. Although the objections of the defense attorneys are less frequent than in the past, there are a few typical reactions. First, the defense attorney may suggest that the treating physician can come to court to discuss care. This is true, but physicians will rarely take the time to thoroughly read medical records and assemble a compre-

hensive report. Second, the defense attorney may argue that the plaintiff can testify about his own treatment. Many people do not have the ability to explain their medical treatment, nor do they wish to recall precisely what occurred during hospitalizations. Thirdly, defense counsel may argue the jury can read the medical records and draw their own conclusions. Unless there are healthcare professionals on the jury, it is rare that a jury would be able to interpret the abbreviations and terms found in medical records. Lastly, defense attorneys in medical malpractice actions need assurance that the expert fact witness is not going to provide opinions about liability. Although it may seem obvious, the defense attorney occasionally wants to depose a nursing expert fact witness to be absolutely sure the nurse will not offer opinions on physician standard of care. In my experience, depositions are rarely taken because it is very clear what the expert will testify about on the stand.

In the rare event that such a case goes to trial, judges tend to appreciate the convenience of having one witness explain the medical treatment, rather than bringing in a host of healthcare professionals, each of whom would explain their piece of the care. The expert fact witness's job is to use understandable language to teach the mediator or jury so each person gains an appreciation of the experiences of the plaintiff.

### **Med League provides expert fact witness reports. Call us to discuss your needs.**

An expert fact witness/pain and suffering report may be useful for a case involving:

- burns
- paralysis
- motor vehicle crash
- pedestrian struck by a vehicle
- motorcycle crash
- workplace injury
- drug reaction with serious effects, such as skin loss
- surgical misadventure
- medication error
- injury from a defective product
- fall with fractures
- head injury