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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
- 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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Getting the Most Out of Your Nursing Expert by Pat Iyer

Nursing experts fit into two categories: the "behind the scenes" expert who serves in a purely consulting role, and the testifying expert who opines on liability. Both can provide value to the attorney handling a case involving medical issues by translating the sometimes mysterious world of medicine into understandable concepts.

A consulting expert provides work product reports protected from discovery by supplying advice and guidance to the attorney at any of the stages of a case. **Steve New of the Law Offices of Steven New** in Beckley, WV offers this perspective about the use of a consulting expert:

"I believe that attorneys should get a nursing expert involved early on in any medical malpractice case they are reviewing. There are several reasons for this. First, there may be nursing negligence involved in the bad outcome for the patient. Second, a nursing expert is going to be able to explain the nurses' roles in overall environment of care. Finally, the nursing expert is going to be able to assist with strategies such as whether to include the nurse's/hospital's negligence in the action, or using the nurse's testimony to help establish the standard of care/breach against the physician. The nursing expert can then help guide the attorney through research, con-

sultation with other experts, and the typical case development."

Once the attorney has reached the conclusion that a testifying nursing expert witness is needed, several considerations guide the selection of such an expert to get the most out of the expert. **Ray Fleming of Sachs Maitlin Fleming and Greene** of West Orange, NJ, has this to say: "I think the main thing lawyers forget to think about is a nurse's specialty. They focus on that with doctors, but often lose sight of it with nurses.

If you retain a well-qualified nurse to testify in a medical surgical case, but the expert's background is primarily emergency care, or home care, she or he is going to be subject to a credibility attack at depositions and trial. Sometimes we think, 'Ok, she's a legal nurse consultant', but if his or her experi-

ence doesn't match the case, there can be trouble. Similarly, we usually want the nurse to have recent clinical experience. Sometimes, there's an academic issue, like the meaning of a hospital policy, but usually the big issue in these cases is a clinical judgment. I have been able to call many nursing experts' credibility into question on the basis that they have not been on the front lines making the tough decisions my poor defendant nurse has to make every day."

Peter Berge of Bendit Weinstein in West Orange, NJ, focuses on several selection criteria for a nursing expert: clinical/teaching experience in the appropriate field/specialty at issue in case; comparison of



qualifications of the expert with those of defendant(s), including experience, education and certifications; and any legal requirements regarding matching liability experts with the defendants. He also considers how the expert will be qualified to opine on the actions of the defendant and on matching the expert's practice setting with that of the defendant. Peter advises attorneys to look for experts with applicable clinical certifications, such as those granted by the clinical nursing associations which result in certification such as Certified Pediatric Nurse, Certified Post Anesthesia Nurse, Critical Care Registered Nurse, or Certified Emergency Nursing. A nurse who wishes to become certified has to reach a threshold of clinical experience and pass an exam based on standards of the professional association. See www.medleague.com/webstore/med_league/professional_acronyms.htm for more certifications. Ray Fleming points out, "A lot of the nursing specialty organizations have published guidelines and standards. These can be a great resource, either affirmatively or for use in cross-examination of the other side's expert, and a lot of attorneys don't know to inquire about these." Your nursing expert likely has copies of these standards or can readily obtain them for you.

Ray Fleming offers some concrete suggestions for getting the most out of your expert as the case progresses. "Ask for an honest assessment of the case and don't ask an expert to say anything he or she is not comfortable with. Be sure all of the documents needed to accurately assess the case are supplied to the expert. Keep the experts up to date with new deposition transcripts that come in after they've rendered a report and with new reports of other experts, etc." It is frustrating for experts to receive a package of depositions to review a few days before the expert's deposition is to take place. The expert risks missing key pieces of information in the rush to read and assimilate the new information. Ray points out this can overwhelm the expert the night before a deposition or trial. "Use the nurse as a resource, and call to ask for his or her input and help before deposing the other side's expert. And I always try to keep them informed of the status of the case, especially changes in deposition or trial dates... make your witness your friend, not your enemy!"

Steven New advises attorneys handling nursing employment matters to consider using nursing experts in those cases. He is seeing a trend for retaliation against whistleblower nurses who report violations of standards of care or staffing, or behavioral issues of other healthcare providers. Attorneys need reliable nurses with management background who are ready to address those issues.

Med League has about 100 nursing experts in a variety of clinical fields ready to evaluate nursing malpractice cases. Please contact us to discuss your needs.

Med League welcomes **Dianna McCorkle BSN, RN, CNOR, FNCSA** to the staff. Dianna has been reviewing cases for Med League as an operating room nursing expert for several years. She has joined the full time staff of the company. She is particularly skilled in helping attorneys understand the nuances of the perioperative setting as attorneys prepare for depositions.



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