

So You Want to Be a Legal Nurse Consultant or an Expert Witness

Issues and Considerations

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ABSTRACT

Expert witnesses affect the profession of nursing by supporting good nursing practice and helping to protect the health, safety, and well-being of patients. Legal nurse consultants and expert witnesses may also serve as advisors to legislative bodies that are deliberating on important health matters, regulations, and legislation. The same skills needed in the courtroom may also be used in legislative settings. To decide whether or not you are interested in serving as an expert witness, several issues need to be considered. This article summarizes critical considerations associated with being an expert witness or legal consultant.

Keywords: Expert witness, legal nurse consultant, testimony

Serving as an expert witness supports several important goals in nursing. Expert witnesses affect the profession of nursing by supporting good nursing practice and helping to protect the health, safety, and well-being of patients. Legal nurse consultants and expert witnesses may also serve as advisors to legislative bodies that are deliberating important health matters, regulations, and legislation. The same skills needed in the courtroom may also be used in legislative settings. To decide whether you are interested in serving as an expert witness, several issues need to be considered. This article

summarizes critical considerations associated with being an expert witness or a legal nurse consultant.

ISSUE 1: DO YOU HAVE QUALIFICATIONS THAT WILL MAKE YOU ATTRACTIVE TO EITHER A LAW FIRM OR A HEALTH CARE AGENCY?

Lawyers look at several factors when they retain either a legal nurse consultant or an expert witness. Typically, a nurse must have at least a bachelor of science in nursing to attract the interest of a law firm or health care agency. In addition, such groups usually seek nurses

who have current clinical experience in the area of interest or concern. Specialty certification is another factor that will be considered when retaining a legal nurse consultant or expert witness. A nurse's reputation in his or her area of expertise is an important factor also. If the nurse has published or performed pertinent research, it will assist in his or her selection. Attorneys and agencies are particularly loath to hire a nurse who has had prior legal problems or has received any type of censure from his or her board of nursing. As a rule, the legal team is looking for someone who can translate complex issues into clear, simple terms understandable by other lawyers, juries, and judges.

ISSUE 2: DO YOU WANT TO SERVE AS A LEGAL NURSE CONSULTANT OR AN EXPERT WITNESS?

In general, several important differences exist between legal nurse consultants and expert witnesses. Legal nurse consultants are usually hired to review cases and determine whether the case is meritorious. In making this determination, they usually organize pertinent medical records and prepare chronologies or timelines related to a specific case. They may also be responsible for researching literature and standards of care that are pertinent to the issues in the case. Some legal nurse consultants assist attorneys as they formulate questions to be asked at depositions or at trial. Legal nurse consultants may also be hired by health care organizations to serve as risk managers or risk reduction experts. One very important distinction is that legal nurse consultants do not typically offer expert testimony at depositions or at trial. Consequently, some advanced practice nurses may find it difficult to be hired by a law firm because the law firm may not want to duplicate chart review and case preparation when they will have to have an expert witness also review the case to testify. If you are retained as a legal nurse consultant you may expect the remuneration to be less than if you were serving as an expert witness because less responsibility is involved.

Nurse expert witnesses engage in activities that are similar to those of the legal nurse consultant. For example, they may be asked to organize medical records, prepare timelines, research pertinent literature, and investigate standards of nursing care. However, it is also expected that they will be willing to testify at a deposition and trial should the need arise. Like legal nurse consultants, expert witnesses may also be hired by health care

organizations in risk reduction positions. Expert witnesses usually are paid quite a bit more for their services.

ISSUE 3: HOW MUCH TIME ARE YOU ABLE TO DEVOTE TO SERVING AS A LEGAL NURSE CONSULTANT OR EXPERT WITNESS?

Both legal nurse consultant and expert witness roles require flexibility. In a number of cases, the consultant or expert witness will need to prepare materials and review voluminous documents within a relatively short time. An expert nurse witness must also be prepared to appear at a deposition or at trial when subpoenaed. Consequently, if you are considering either of these roles, it is important to make suitable arrangements with family and employers.

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In addition, some states limit the percentage of the expert nurses' income that comes from serving in this capacity. For example, Maryland dictates that no more than 20% of the expert's income is derived from these activities. States have such laws because they hope to avoid what is commonly known as the "hired-gun" syndrome, whereby a professional is earning exorbitant amounts of money annually testifying either for or against other health professionals.

ISSUE 4: WHAT TYPES OF CASES ARE "HANDS-OFF"?

For both legal and ethical reasons, expert witnesses and legal nurse consultants cannot take cases that involve a current employer. Additionally, contingency-based fees

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