



The Essentials of Expert Witnessing for the Radiology Nurse



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ABSTRACT: Expert witness opinions and testimony are necessary in medical malpractice cases to teach and explain the underlying clinical issues to the attorney client, lay jury, and/or judge. As such, these cases rise and fall on expert testimony. This article offers an overview of expert witnessing and will explore what is an expert witness, what is the role of an expert witness, what are the necessary qualifications, how experts are located, what is the general course of expert witness work, and what are some resources for expert witnesses. (*J Radiol Nurs* 2015;34:8-12.)

KEYWORDS: Expert witness; Nurse expert; Expert testimony; Radiology nursing; Radiology nurse expert.

INTRODUCTION

Medical malpractice cases rise and fall on expert witness testimony. Because of the complexity of these cases and their underlying clinical issues, expert witness testimony is necessary to teach and explain those matters to the average lay jury and/or judge.

WHAT IS AN EXPERT WITNESS?

An expert witness is defined as one who, “by virtue of special knowledge, skill, training, or experience, is qualified to provide testimony to aid the fact finder in matters that exceed the common knowledge of ordinary people” (Sisko, 2010, p. 664). Therefore, because medical malpractice cases involve issues of which the

average layperson does not have knowledge, both the plaintiff (the person bringing the lawsuit) and the defendant (the person or entity being sued) use expert witnesses to explain their case to the finder of fact (i.e., jury, judge, arbitrator).

In a medical malpractice case in which a nurse’s actions are being examined, nurse expert witnesses with similar education, training, and experience as the nurse in question will be retained by both plaintiff and defense attorneys to review the case. Nurse experts are licensed registered nurses who have developed a knowledge base and expertise in a particular clinical specialty. These individuals have practiced for a significant amount of time in that clinical specialty, typically 8 to 10 years at a minimum. These nurses use their expertise to review, analyze, and opine (offer their opinion) whether other nurses practicing in that specialty have met the standard of care.

As with any expert witness, nurse experts must opine within their scope of expertise and experience, both within their profession *and* their specialty nursing practice. In other words, a radiology nurse could not opine whether a radiologist or a labor and delivery nurse complied with the applicable standard of care.

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1546-0843/\$36.00

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<http://dx.doi.org/10.1016/j.jradnu.2014.11.002>*

“The Essentials of Expert Witnessing for the Radiology Nurse”, GNA ID # 317125 has been approved for 1.0 contact hour.

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Regardless of which side the expert witness was retained by, he or she is expected to be unbiased and offer opinions based on established and recognized standards of care (American Association of Legal Nurse Consultants [AALNC, in press-a]). Sometimes those opinions are favorable to the retaining attorney; sometimes they are not.

WHAT IS THE ROLE OF THE NURSE EXPERT WITNESS?

The role of the nurse expert is unvaried regardless of which side hired the expert. The primary role of the nurse expert witness is to analyze the actions of the defendant in the context of the standards of care that were applicable at the time of the incident in question. The standard of care is legally defined as the “degree of care that a reasonably prudent person in that profession should exercise under the same or similar circumstances” (Sisko, 2010, p. 678). The expert must identify the relevant standards of care and compare the defendant’s actions to them.

There are many sources used in concert to identify the relevant standard(s) to which the defendant must be held. For example, the expert may use the clinical practice guidelines promulgated by the Association for Radiologic and Imaging Nursing (ARIN) as one resource. Other resources may include the *Journal of Radiology Nursing*, nursing textbooks, the defendant facility’s policies and procedures, and so on. The expert then applies those standards to the case at hand to identify any areas in which the defendant nurse deviated from, or adhered to, the standard of care.

For instance, in a case alleging acute compartment syndrome from a contrast media extravasation into the volar aspect of the right wrist in 2009, one standard of care resource that may be used by the nurse expert is the American College of Radiology manual on contrast media (ACR, 2013). However, because the content regarding extravasation of contrast media was last updated in 2013 (version 9), the nurse expert would need to locate version 6 of the manual to identify the standards in effect in 2009 regarding suitable intravenous access sites and angiocatheter size for intravenous contrast media administration.

WHAT ARE THE NECESSARY QUALIFICATIONS TO SERVE AS AN EXPERT WITNESS?

Each state has specific statutory requirements that a clinician must meet to be qualified to serve as an expert witness. Such state law may proffer specifications regarding current and/or prior active clinical practice in the specialty relative to the date of incident in question. For example, [Connecticut General Statute §52-184c](#)

states that expert witnesses in actions alleging negligence of a health care provider must have “active involvement in the practice or teaching of medicine within the 5-year period before the incident giving rise to the claim.” It is the attorney’s responsibility to secure an expert witness who meets these statutory requirements.

In addition, basic qualifications for nurse expert witnesses include having an active, unrestricted registered nurse license with no prior disciplinary actions. Holding at least a bachelor’s degree in nursing is also preferred. Most attorneys require nurse experts to have a minimum of 5 years’ experience in the applicable clinical specialty, but at least 8 to 10 years is typically preferred. Ideally, the nurse expert is also board certified in his or her nursing specialty (e.g., Certified Radiology Nurse).

No legal or legal nursing education is required to serve as an expert witness. It is the nurse’s *nursing* education, training, and experience that make him or her qualified to offer expert opinions. In fact, some attorneys will not use an expert with legal education and/or credentials listed on his or her curriculum vitae as it may expose the witness to questions on cross-examination that infer a biased opinion.

In addition to the statutory, educational, and experiential requirements, there are also personal characteristics that make an expert witness more credible and valuable. Expert witnesses must have exceptional communication skills. They must be articulate and must confidently and credibly present the facts to the jury and judge. Because most jurors are laypeople with no medical or clinical knowledge, nurse expert witnesses must possess strong teaching skills and be able to easily explain complex medical topics and opinions to the jury in an understandable way.

Expert witnesses must be able to remain poised and calm under pressure, specifically when being questioned by the opposing attorney. Whether at deposition or trial, expert witnesses may be subject to aggressive cross-examination, which requires great focus and stamina. Nurse expert witnesses must maintain their composure and refrain from raising their voice or showing their frustration. Maintaining professional conduct and appearance at all times adds to the expert’s credibility in the eyes of the jury.

Serving as an expert witness also requires an in-depth and complete understanding of all pertinent medical records and other case-related material as well as an overall understanding of the case and case theory. Thus, the expert witness must be detail oriented and very thorough. Nurse experts are often able to identify a small detail in the medical record that may turn out to be a key piece of evidence. For example, the nurse expert witness reviewing a case alleging a fall during a computed tomography-guided steroid injection may find one tiny checkbox indicating that the safety belt was, in fact, placed on the patient.

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