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Upcoming Events

Using TrialPad: From Beginner to Expert

A Zoom Webinar
10:00 am – 2:00 pm
Wednesday

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IN BRIEF

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Is Your Client Leaving Money on the Exam Table?

By Jane E. Barone, B.S., R.N., L.N.C.C.

It happens frequently. A plaintiff's attorney receives a long-awaited physician's report from a defense medical expert, only to learn that it contradicts what your client said happened at the exam, or worse, what the lawyer knows to be true about the client's injuries.

There is a well-established solution: a legal nurse consultant who can observe and document the exam.

This means:

- You have a witness who can testify about discrepancies or omissions in the expert's report;
- The exam maybe more comprehensive;
- There may be an audio-recording; and
- You get your own written report.

Oftentimes, these extra layers of protection can produce a stronger case for your client.

Here are two recent examples:

The Cervical Fusion Case

A plaintiff experienced a cervical fusion. The neurosurgical examination was observed, and the defense doctor's report was compared with what actually happened at the exam. The DME said he performed several types of examinations which he did not do. This was confirmed by an audio-recording. Prior to the DME deposition, an extremely aggressive defense firm said that this case was not worth any more than \$225,000. After the deposition, the case settled for \$325,000 in a matter of weeks.

The Cold Hand

A plaintiff visited a DME for reflex sympathetic dystrophy of his hand. The defense's expert claimed that the plaintiff had good hand circulation; his hand was alleged to be warm and dry. However, according to the nurse consultant, the opposite was true. The plaintiff's hand was cold, with poor circulation. The consultant's testimony helped settle the case.

In our society, doctors command great authority. This status means that your client may feel compelled to comply with their requests without question. But not every request is equal. If the doctor asks a nonmedical or liability question, a nurse consultant can intervene. If a doctor attempts to perform an unauthorized X-ray or other test, a nurse consultant can intervene.

Some lawyers think they do not need a nurse consultant. Instead, they recommend that a family member accompany the plaintiff. This approach is understandable, yet seriously flawed. A layperson does not know what should be included in a medical history, which tests are appropriate or how an exam should be performed. By contrast, a nurse consultant is medically trained and knows how to separate debatable speculation from established pathology.

It is not just what a doctor does; it is also what a physician might not do. For example, in an orthopedic or neurologic exam a doctor might skip a part of full-reflex testing or exclude a portion of motor testing. Such omissions can be decisive in later challenging the doctor's conclusions. A nurse consultant can help ensure that the defense doctor does not get a free pass when testifying.

A nurse consultant is a legally trained witness who knows what is important to record. Self-evident things, like a grimace or a delayed response, can prove to be critical. The same is true for conditions most people tend to overlook, such as whether your client needs an assistive device, suffers from limited motion, or cannot sit for an extended period. These details often are missing from defense reports.

So, the next time you are asked to send a client to a defense medical exam, consider sending a legal nurse consultant as well. You will not only be protecting the plaintiff's rights; you will be leveling the playing field in both the exam room and the courtroom.

Jane E. Barone, B.S., R.N., L.N.C.C. is a principal at Medi-Law Solutions in Livingston, NJ and a past president of the New Jersey Chapter of the American Association of Legal Nurse Consultants. Her specialties include medical malpractice, personal injury, toxic tort, and pharmaceutical cases. She can be reached at jbarone@medilawsolutions.com or at (973)376-9037.

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