LIABILITY LESSONS FOR LEGAL NURSE CONSULTANTS

Julie Dickinson MBA, BSN, RN, LNCC
Elizabeth Zorn BSN, RN, LNCC

CONFLICT OF INTEREST DISCLOSURE

Elizabeth Zorn and Julie Dickinson certify that, to the best of their knowledge, no affiliation or relationship of a financial nature with a commercial interest organization has significantly affected their views on the subject on which they are presenting.

OBJECTIVES

- Discuss the three features of LNC practice that may increase exposure to liability claims.
- Analyze selected areas of potential liability for LNCs.
- Examine three principles of risk reduction that can be effective in LNC practice.
OVERALL RISK

Working full time
Being an independent consultant
Offering expert opinions

RESEARCH

Legal Research
Informal sources
LNC claims from NSO

RESEARCH RESULTS: AREAS OF POTENTIAL LIABILITY

1. Real or apparent conflict of interest
2. Working on a potential case without attorney involvement
3. Insufficient and/or unqualified expert affidavit or opinion letter
4. Opining outside of the appropriate scope of expertise
5. Failure to maintain opinion / improper withdrawal as an expert witness
6. Advice and work of behind-the-scenes consultant
7. Fee disputes
8. Copyright infringement
9. Confidentiality violations
10. Malicious prosecution
LIABILITY AREA #1

Working on a Potential Case Without Attorney Involvement

...you will need a legal nurse consultant's review of your loved one's case.

“Find Legal Nurse Consultants To Review Your Case”

Marketing directly to potential plaintiffs, not to attorneys

LIABILITY AREA #1

Working on a Potential Case Without Attorney Involvement

“Take-aways”

- Do not market LNC services to the lay public.
- Never agree to evaluate a case without an attorney being involved.
- Instruct patient and/or family to contact an attorney.
- Adhere to AALNC’s Code of Ethics and Conduct, which includes: “The legal nurse consultant does not practice law.”
- Be knowledgeable of the relevant sections of ABA’s Model Rules of Professional Conduct (Rules 5.3 and 5.7).
LIABILITY AREA #2

Insufficient and/or Unqualified Expert Affidavit or Opinion Letter

Case Study: Plante et al. v. Charlotte Hungerford Hospital et al.

- Plaintiffs: Administrator of decedent’s estate and other family members
- Defendants: Hospital, psychiatrist, clinical social worker, and two ER physicians

Allegations: Discharged decedent prematurely from ER, where she had presented experiencing a severe mental health crisis. As a result, decedent committee suicide.

Motion to Dismiss: On the grounds that plaintiffs failed to affix to the complaint an opinion letter from a similar healthcare provider
LIABILITY AREA #2

Case Study:
Plante et al. v. Charlotte Hungerford Hospital et al.

Applicable Statute:
CT General Statutes § 52-190a: Any civil complaint that alleges injury/death as a result of the negligence of a healthcare provider must include a written and signed opinion of a similar health care provider that there appears to be evidence of medical negligence and includes a detailed basis for the formulation of such opinion.

LIABILITY AREA #2

Case Study:
Plante et al. v. Charlotte Hungerford Hospital et al.

Author of Opinion Letter:
- Registered Nurse
- Obtained nursing degree in 1960
- Retired 2 years prior to the alleged 2004 incident
- Psychiatric nursing experience consists of 3 months at a hospital in 1960
- Never evaluated a potentially suicidal patient
- Last worked in ER in 1974 and in hospital in 1979
- Worked in SNF for the 22 years prior to retirement

LIABILITY AREA #2

Case Study:
Plante et al. v. Charlotte Hungerford Hospital et al.

Outcome: RN author is not a "similar health care provider" to ANY defendant. Even her psychiatric nursing experience is "scant." She is:
- Not an ER physician
- Not a psychiatrist
- Not a clinical social worker

Motion to Dismiss: GRANTED
LIABILITY AREA #2

Insufficient and/or Unqualified Expert Affidavit or Opinion Letter

• Take-aways:
  • Limit your opinions to your area of expertise and do not opine outside of your clinical qualifications and specialty.
  • Be familiar with the statutory requirements for authoring expert affidavits / certificates of good faith in the state(s) in which you work.
  • Understand the essential components of these documents to ensure that all required content is addressed.

LIABILITY AREA #3

Opining Outside of the Appropriate Scope of Expertise

Case Study:
Taplin v. Lupin et al.

• Plaintiff: Administrator of decedent’s estate
• Defendants: Hospital and internal medicine physician
Case Study: Taplin v. Lupin et al.

- Allegations: Discharged decedent from ER even though she was weak, tired, and showed signs of distress. Later that evening, she was taken to another ER for moderate respiratory distress. She died 2 days later.

- Motion for Summary Judgment: On the grounds that plaintiff will not be able to meet his burden of proof as he has not produced any expert witnesses who will be able to testify the defendants breached the standard of care.

LIABILITY AREA #3

Case Study: Taplin v. Lupin et al.

- Applicable Statute:
  - La. R.S. 9:2794: D.(1) In a med mal action against a physician, a person may qualify as an expert witness on the issue of physician standards of medical care only if:
    (a) He is practicing medicine at the time of testimony or at the time the claim arose.
    (b) He has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim.
    (c) He is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of care.
    (d) He is licensed to practice medicine.

Case Study: Taplin v. Lupin et al.

- Expert Witness: Registered Nurse

- Motion for Summary Judgment: GRANTED
Opining Outside of the Appropriate Scope of Expertise

**Take-aways:**
- Be aware of the boundaries of your expertise.
- Opine only within those limits.
- Be knowledgeable of the applicable statutory rules re: expert witness credentials and testimony.
- Adhere to the AALNC’s Code of Ethics and Conduct and the Legal Nurse Consulting: Scope and Standards of Practice.
- Do not purport to be competent in matters in which you have limited knowledge or experience.
- Confine your testimony to the specific area of expertise possessed.

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**LIABILITY AREA #3**

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**LIABILITY AREA #4**

**Fee Disputes**

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**Case Study:**
Smith, RN v. Jones, Esq.

- **Plaintiff:** Sally Smith, RN
- **Defendant:** Jeffrey Jones, Esq.
Case Study: Smith, RN v. Jones, Esq.

**Allegations:** Failure to pay $2,800 invoice for services rendered (small claims court)

**Outcome:** Plaintiff's verdict.

### LIABILITY AREA #4

**Fee Disputes**

• Establish clear understanding with attorney re: nature and extent of work you're being hired to do, including very clear communication regarding whether you are willing to serve as an expert witness.
• Strive for transparency in fees and fee schedules.
• Send invoices at regular intervals, instead of a lump sum at the conclusion of a case.
• Document meticulously re: time spent on case (including time spent but not billed) and communications with attorney.
• Decline further involvement in a case as soon as you determine you cannot support it.
• Understand the details of your professional liability coverage.

### LIABILITY AREA #5

**Confidentiality Violations**
Confidentiality Violations

Case Study: Robley v. Blue Cross / Blue Shield of Mississippi

- Plaintiff: Insured
- Defendant: Health insurance company

Allegations: Failure to maintain its duty of confidentiality of the insured’s medical information in its possession

Motion for Directed Verdict: Trial Court granted defendant’s motion, holding that there was insufficient evidence of a breach of confidentiality. Plaintiff appealed.

Outcome: Appellate Court found no basis for the trial court's holding that the subscriber's agreement allowed the disclosure of the insured's medical information under the factual circumstances created by her daughter's illness. Judgment reversed. Case remanded.
LIABILITY AREA #5

Confidentiality Violations

- **Take-aways:**
  - Maintain client confidentiality.
  - Strictly adhere to all privacy laws.
  - Adhere to the AALNC’s Code of Ethics and Conduct and the Legal Nurse Consulting: Scope and Standards of Practice.
    - The legal nurse consultant protects client privacy and confidentiality.
    - The legal nurse consultant maintains confidentiality commensurate with the attorney-client privilege.
  - Be knowledgeable of the relevant sections of ABA’s Model Rules of Professional Conduct (Rule 1.6).

ADDITIONAL INFORMATION


QUESTIONS?

- Julie Dickinson: julie.dickinson@aya.yale.edu
- Elizabeth Zorn: elzorn@faraci.com