AALNC Position Statement on Licensure for Expert Witnesses

Summary:
The mission of AALNC in this position paper is to protect the public while facilitating the judicial process by recognizing that registered nurse (RN) expert witnesses play an integral role in litigation. Confining the availability of an expert witness to those individuals independently licensed within the state where litigation occurs may place an unfair burden on litigants. This position statement has been developed to educate the medical and legal communities, as well as the public at large, on the licensure issue related to legal nurse consultant expert testimony.

Introduction:
This position statement is the natural extension of recently published position papers and professional development of a distinct role for legal nurse consulting within the litigation arena.

The American Association of Legal Nurse Consultants (AALNC) published a 2005 position statement, The Specialty Practice of Nursing, outlining the need for legal nurse consultants to maintain an active nursing license. In 2006, the American Nurses Association affirmed and recognized Legal Nurse Consulting as a specialty practice of nursing, and published Legal Nurse Consulting: Scope and Standards of Practice, setting the benchmark for professional role delineation. In 2006, AALNC adopted a position statement, Providing Expert Witness Testimony, further defining and developing the role of RN’s who testify as nursing experts.

Given that legal nurse consultants will testify to standards of nursing care in multi jurisdictional settings, AALNC researched and developed this position statement to answer questions regarding nursing licensure and expert testimony across state lines.

Background & Discussion:
The issue of licensure for consulting across state lines has been addressed by two other professional associations in the health care field, the American Medical Association (AMA) and the National Council State Boards of Nursing (NCSBN).

The AMA incorporates language into their expert witness position statements requiring physicians to adhere to a medically acceptable standard of practice
while testifying as an expert witness, and goes as far as accepting the role of collaborating with medical boards to discipline physicians who testify falsely under oath (H-265.992 Expert Witness Testimony). The AMA recommends that individual states develop a methodology for granting temporary licensure to physicians who testify as expert witnesses, indicating licensure for expert testimony by physicians has not been addressed by many State Medical Boards (H-265.992 Expert Witness Testimony).

The NCSBN have addressed multi-state licensure through the Nurse Licensure Compact (NLC). In considering actions relevant to the multi-state licensure, the NCSBN determined the most efficient way to enhance public protection, while retaining state based authority was to have nurses licensed in their state of residency (https://www.ncsbn.org/ANA7Points120503.pdf). Under the NLC, states maintain the authority for disciplinary actions under the State Nurse Practice Act. The nurse practice acts of most states (including non-compact states) currently authorize Boards of Nursing to take action based upon action in another state. (https://www.ncsbn.org/NurseLicensureCompactFAQ.pdf).

While recognition of the role of legal nurse consulting as a specialty practice in nursing was affirmed by the American Nurses Association in 2006, many State Boards of Nursing have not addressed the nurse expert witness at a local or state level. Wishing to collaborate through guidance and support for legal nurse consultants testifying as expert witnesses, judicial systems and State Boards of Nursing, AALNC holds the following positions:

• Legal nurse consulting be recognized as a specialty practice of nursing within the definition of nursing in each jurisdiction. Legal nurse consultants acting in the role of RN expert witnesses be held accountable to the scope of nursing practice within each state’s definition of nursing practice, without the administrative burden of individual licensure in each state.

• Legal nurse consultants, testifying as experts, be knowledgeable of the scope of practices within the state where expert testimony is to be delivered, and recognize that testimony as an expert serves a public interest. The RN expert witness should possess training, education, and experience commensurate with the topic at issue in the expert testimony. The RN expert witness will testify in an impartial clinically competent manner.

• The legal nurse consultant acting as an RN expert witness be required to hold active license in their residential state, and be held accountable to adhere to standards of care required by the State Board of Nursing in the state in which testimony occurs.
Any need for disciplinary actions regarding false or misleading testimony be reported to the residential board of nursing for review and disciplinary action as necessary.

Conclusion
While the practice of legal nurse consulting has been recognized by the American Nurses Association as a specialty practice of nursing, individual state licensing boards have not addressed the role of the RN expert witness. Until such time as this is addressed by individual Boards of Nursing, the American Association of Legal Nurse Consultants adopts the above positions as guidance for practice when the legal nurse consultant functions in the role of RN expert witness.

References:

