

Volume 30

Number 3

Fall 2019

THE JOURNAL OF
**Legal Nurse
Consulting**



SUBCONTRACTING AND LEGAL NURSE CONSULTING

30th
ANNIVERSARY

AALNC

AMERICAN ASSOCIATION OF
LEGAL NURSE CONSULTANTS

We're celebrating our 30th anniversary!

Visit www.aalnc.org/30years to learn more.

Grow your career with **FIG!**

Life Care Planning
Medical Cost Projections
Medicare Set-Asides

Plant A Seed...

Certification Classes

Online & onsite
Pre-approved for certification (CNLCP, CLCP, MSCC)
Payment plan

Nourish Your Foundation...

Customized Coaching

Strengthen Your Roots...

Continuing Education

Pre-approved for CNLCP, CLCP, MSCC & RN

Retreat Of Resources...

Treehouse

Interactive website with resources, happenings, & networking



FIG

FIGeducation.com





06 LNC ETHICAL BEHAVIOR...OR NOT?

Curated by

Patricia Ann "Stormy" Green, RN, BSHS, RNFA
Christie Paige, RN-BC, CLNC
Joanne Walker, BSEd, RN

14 COMMUNICATION IS KEY WHEN WORKING WITH SUBCONTRACTORS

Christie Paige, MSN, RN-BC

18 DECIPHERING SUBCONTRACTING AGREEMENTS

Michele Smeltzer, MSN, RN, CEN

22 FINDING THE RIGHT EXPERT WITNESS FOR MEDICAL MALPRACTICE CASES

Kathy G. Ferrell, BS, RN, LNCC

26 TAX IMPLICATIONS FOR LEGAL NURSE CONSULTANT 1099 EMPLOYEES AND EMPLOYERS

Elizabeth Murray BSN, RN, LNCC
Kirsten Turkington, DNP, APRN, FNP-C, AFN-BC,
CEN, CNLCP



- 02 Manuscript Review Process
- 03 Article Submission Guidelines
- 04 From the President
- 05 From the Editor
- 21 Test Your Screening Skills



AMERICAN ASSOCIATION OF
LEGAL NURSE CONSULTANTS

American Association of Legal Nurse Consultants

330 North Wabash Ave., Suite 2000
Chicago, IL 60611
877/402-2562
312/321-5177
Fax: 312/673-6655
E-mail: info@aalnc.org
Web site: www.aalnc.org

BOARD OF DIRECTORS

President

Elizabeth Murray, BSN RN LNCC

President-Elect

Laura Nissim, RN MS CNS LNCC

Past President

Kimberly Beladi, BSN RN LNCC

Secretary/Treasurer

Mary Flanagan, BSN RN CNOR LNCC

Directors at Large

Marjorie Berg Pugatch, RN MA
EMT-B LNCC

Erin Gollogly BSN RN LNCC

Lisa A. Mancuso, RN BSN PCCN CCRN
CLCP LNCC

THE JOURNAL OF LEGAL NURSE CONSULTING

Editor

Wendie A. Howland, MN, RN-BC,
CRRN, CCM, CNLCP, LNCC

Editorial Committee For This Issue:

Beverly Abbott RN, MBA, CLNC
Marilyn Arenas, MS, BSN, RN
Kathleen Ashton, PhD, RN, ACNS-BC
Randall Clarke, BSN, RN
Sherry DelGrosso DNP, RN
Glennis Fuller, RN, CCRN
Erin Gollogly, BSN, RN
Patricia Ann "Stormy" Green Wan,
BSHS, RN, RNFA
James Hanus, BSN, RN, OCN, MHA
Elizabeth Hill, RN, PhD
Cheryl Hobbs, RN, CEN, CNLC
Linda Kimmerle, BSN RN MPM
CCM ALNC
MJ Lockard, MSN, FNP-C, GNP-BC
Mindy Lockereetz, BSN, RN
Adam McKinnon, BSN RN TNCC ACLN
Elizabeth Murray, BSN, RN, LNCC
Christie Paige, MSN, RN-BC, CLNC
Michele Smeltzer, MSN, RN, CEN
Kirsten Turkington, DNP, APRN, FNP-C,
CNLCP, AFN-BC
Deborah S. (Susie) White, BSN, RN,
LNCC
Joanne Walker, BSEd, RN
Judy A. Young, MSN, MHL, RN, LNCC
Elizabeth Zorn, BSN, RN, LNCC

STAFF

Executive Director

Jena Eberly Stack, M.Ed, PMP

PURPOSE

The purpose of The Journal is to promote legal nurse consulting within the medicallegal community; to provide novice and experienced legal nurse consultants (LNCs) with a quality professional publication; and to teach and inform LNCs about clinical practice, current legal issues, and professional development.

MANUSCRIPT SUBMISSION

The Journal accepts original articles, case studies, letters, and research. Query letters are welcomed but not required. Material must be original and never published before. A manuscript should be submitted with the understanding that it is not being sent to any other journal simultaneously. Manuscripts should be addressed to JLNC@aalnc.org. Please see the next page for Information for Authors before submitting.

MANUSCRIPT REVIEW PROCESS

We send all submissions blinded to peer reviewers and return their blinded suggestions to the author. The final version may have minor editing for form and authors will have final approval before publication. Acceptance is based on the quality of the material and its importance to the audience.

The *Journal of Legal Nurse Consulting* is the official publication of the American Association of Legal Nurse Consultants (AALNC) and is a peer reviewed journal. Journal articles express the authors' views only and are not necessarily the official policy of AALNC or the editors of the journal. The association reserves the right to accept, reject or alter all editorial and advertising material submitted for publication.

The content of this publication is for informational purposes only. Neither the Publisher nor AALNC assumes any responsibility for any injury and/or damage to persons or property arising out of any claim, including but not limited to product liability and/or negligence, arising out of the use, performance or operation of any methods, products, instructions, or ideas contained in the material herein. The reader shall assume all risks in connection with his/her use of any of the information contained in this journal. Neither the Publisher nor AALNC shall be held responsible for errors, omissions in medical information given nor liable for any special, consequential, or exemplary damages resulting, in whole or in part, from any reader's use of or reliance on this material.

The appearance of advertising in the *The Journal of Legal Nurse Consulting* does not constitute a guarantee or endorsement of the quality or value of such product or of the claims made for it by its manufacturer. The fact that a product, service, or company is advertised in *The Journal of Legal Nurse Consulting* shall not be referred to by the manufacturer in collateral advertising. For advertising information, contact JLNC@aalnc.org or call 877/402-2562.

Copyright ©2019 by the American Association of Legal Nurse Consultants. All rights reserved. For permission to reprint articles or charts from this journal, please send a written request noting the title of the article, the year of publication, the volume number, and the page number to Permissions, *Journal of Legal Nurse Consulting*, 330 North Wabash Ave., Suite 2000, Chicago, IL 60611; JLNC@aalnc.org. Permission to reprint will not be unreasonably withheld.

Journal of Legal Nurse Consulting (ISSN 2470-6248) is published digitally by the American Association of Legal Nurse Consultants, 330 North Wabash Ave., Suite 2000, Chicago, IL 60611, 877/402-2562. Members of the American Association of Legal Nurse Consultants receive a subscription to *Journal of Legal Nurse Consulting* as a benefit of membership. Subscriptions are available to non-members for \$165 per year. Back issues are available for free download for members at the Association website and \$40 per copy for non-members subject to availability; prices are subject to change without notice. Back issues more than a year old can be obtained through the Cumulative Index to Nursing & Allied Health Literature (CINAHL). CINAHL's customer service number is 818/409-8005. Address all subscriptions correspondence to Circulation Department, *Journal of Legal Nurse Consulting*, 330 North Wabash Ave., Suite 2000, Chicago, IL 60611. Include the old and new address on change requests and allow 6 weeks for the change.

ARTICLE SUBMISSION

The *Journal of Legal Nurse Consulting* (JLNC), a peer reviewed publication, is the official journal of the American Association of Legal Nurse Consultants (AALNC). We invite interested nurses and allied professionals to submit article queries or manuscripts that educate and inform our readership about current practice methods, professional development, and the promotion of legal nurse consulting within the medical-legal community. Manuscript submissions are peer-reviewed by professional LNCs with diverse professional backgrounds. The JLNC follows the ethical guidelines of COPE, the Committee on Publication Ethics, which may be reviewed at: <http://publicationethics.org/resources/code-conduct>.

We particularly encourage first-time authors to submit manuscripts. The editor will provide writing and conceptual assistance as needed. Please follow this checklist for articles submitted for consideration.

INSTRUCTIONS FOR TEXT

- Manuscript length: 1500 – 4000 words
- Use Word® format only (.doc or .docx)
- Submit only original manuscript not under consideration by other publications
- Put title and page number in a header on each page (using the Header feature in Word)
- Place author name, contact information, and article title on a separate title page, so author name can be blinded for peer review
- Text: Use APA style (Publication Manual of the American Psychological Association, 6th edition) (<https://owl.english.purdue.edu/owl/resource/560/01/>)
- Legal citations: Use The Bluebook: A Uniform System of Citation (15th ed.), Cambridge, MA: The Harvard Law Review Association
- Live links are encouraged. Please include the full URL for each. Be careful that any automatic formatting does not break links and that they are all fully functional.
- Note current retrieval date for all online references.
- Include a 100-word abstract and keywords on the first page
- Submit your article as an email attachment, with document title articlename.doc, e.g., wheelchairs.doc

INSTRUCTIONS FOR ART, FIGURES, TABLES, LINKS

- All photos, figures, and artwork should be in JPG or PDF format (JPG preferred for photos). Line art should have a minimum resolution of 1000 dpi, halftone art (photos) a minimum of 300 dpi, and combination art (line/tone) a minimum of 500 dpi.
- Each table, figure, photo, or art should be submitted as a separate file attachment, labeled to match its reference in text, with credits if needed (e.g., Table 1, Common nursing diagnoses in SCI; Figure 3, Time to endpoints by intervention, American Cancer Society, 2003)

INSTRUCTIONS FOR PERMISSIONS

The author must accompany the submission with written release from:

- Any recognizable identified facility or patient/client, for the use of their name or image
- Any recognizable person in a photograph, for unrestricted use of the image
- Any copyright holder, for copyrighted materials including illustrations, photographs, tables, etc.
- All authors must disclose any relationship with facilities, institutions, organizations, or companies mentioned

GENERAL INFORMATION

Acceptance will be based on the importance of the material for the audience and the quality of the material, and cannot be guaranteed. All accepted manuscripts are subject to editing, which may involve only minor changes of grammar, punctuation, paragraphing, etc. However, some editing may involve condensing or restructuring the narrative. Authors will be notified of extensive editing. Authors will approve the final revision for submission.

The author, not the Journal, is responsible for the views and conclusions of a published manuscript. The author will assign copyright to JLNC upon acceptance of the article. Permission for reprints or reproduction must be obtained from AALNC and will not be unreasonably withheld.



Elizabeth Murray,
BSN RN LNCC

President, AALNC

President's Update

Dear AALNC Members,

This issue of the *Journal of Legal Nurse Consulting* is all about subcontracting and the business side of legal nurse consulting, addressing issues new LNCs ask me the most often: subcontracting, contracts, and fee schedules. The expertise and experience of our authors in this issue serve as an excellent reference for our members struggling with the business side of legal nurse consulting. I like to tell new legal nurse consultants that they already have all the clinical knowledge, ability to recognize standards of care, and skills to perform medical research needed to work as a legal nurse consultant. However, experience as a nurse does not usually include business training and skill. Incorporating your own business, working as a subcontractor, or hiring employees can require further analysis and inquiry for nurses. I'm grateful to our intrepid editor, Wendie Howland, our editorial committee, and authors for creating this valuable resource issue for legal nurse consultants.

While we continue to celebrate AALNC's 30th year as the nonprofit professional association for our industry, I am focused on getting the word out on our #KnowTheDifference campaign. This is because many aspiring and new legal nurse consultants don't know the difference between certificate programs and the LNCC® nursing board certification. It is also critical for them to understand and discern the differences between the various educational programs on LNC work before they invest time and money in one. I encourage all of you to continue the discussion with your colleagues and clients to spread the word on the difference between course certificates and true certification in legal nurse consulting. The following will help:

- ✦ An educational program or institution course open to newcomers or experienced professionals is a **certificate program**. The American Nurses Credentialing Center (ANCC) accredits many certificate programs. The vast majority are offered by for-profit companies.

AALNC, our nonprofit professional association, also has a program like this, targeted specifically for entry-level legal nurse consultants, The LNC Professional Course. Experts in our field researched, created, and teach it. It is accredited by ANCC, which also accredits all of AALNC's continuing education. A legal nurse consultant may list this course on a CV under "Education."
- ✦ In contrast, a specialty nursing board **certification** recognizes knowledge, skills, and competency gained from education and documented experience in a field. Certification is not for new or entry-level nurses, including legal nurse consultants. Familiar examples are the CCRN, CEN, and OCN. Standards are set through a defensible process widely recognized in the industry and awarded by a third-party standard-setting organization, typically a nonprofit organization. The American Legal Nurse Consultant Certification Board's LNCC® is for experienced LNCs and has been accredited and reaccredited by the Accreditation Board for Specialty Nursing Certification (ABSNC) since 1998. It is the only ABSNC-accredited nursing board certification for legal nurse consultants. Eligibility criteria to sit the certification examination include a current RN license, a minimum of five years practicing as an RN, and 2000 hours of LNC experience within the past five years. Your nursing skills and expertise are the bedrock of your legal nurse consulting career. #KnowTheDifference!

Elizabeth Murray, BSN RN LNCC

Editor's Note

Welcome to the September JLNC focusing largely on ethical subcontracting in LNC work. When this topic bubbled up in editorial meeting about a year ago, I was surprised at the passion it provided in my generally mild-tempered crew. Everybody, it seemed, had an opinion on how well or badly their experiences went.

The authors made a diligent search for related pieces in the LNC literature and came up with nothing, so as far as we know, this is the first such article published on this topic. They decided to make it a Round Table for this issue and an ongoing project, starting with outreach to LNCs of all stripes with some open-ended questions: Have you ever been an LNC subcontractor or hired subcontractors? What happened?

We have been both surprised and gratified by the returns so far, long and short, collected and used with great care to preserve all responders' anonymity. After our meeting, I had gone to bed wondering if I were a Good Witch or a Bad Witch, and came up empty. I was relieved to learn from the survey returns that my first subcontracting experience was a good learning experience from a colleague who I greatly respect, and grateful that I turned down other "opportunities" that

felt wrong. I was glad to learn that the way I engaged subs (known referrals from colleagues) and paid them (immediately, and more than they asked for because I thought their work well worth it) put me in Glinda's camp. But it was dismaying to see that Bad Witches are out there. Perhaps some of them will recognize themselves in these quotes and decide to mend their ways. And if not, well, at least it might be easier for new LNCs to recognize and avoid them in the whirlwind of early practice.

We owe a debt to the authors who have put so much time and effort into this project. I want all of you who didn't respond to the original

survey to look forward to this working group's further explorations into ethical behavior in LNC work, and put in your thoughts and opinions when you see their requests for data. I think we have a real opportunity to add to the profession by publishing it. What do you think? Let us know.

Warm regards,

Wendie A. Howland

Wendie A. Howland MN RN-BC CRRN CCM CNLCP LNCC
Editor



Wendie Howland
MN, RN-BC, CRRN,
CNLCP, LNCC

Editor, JLNC





LNC Ethical Behavior...or Not?

Curated by

Patricia Ann "Stormy" Green, RN, BSHS, RNFA

Christie Paige, RN-BC, CLNC

Joanne Walker, BSEd, RN

Developing an LNC business is a time-consuming and often not immediately successful enterprise. Therefore, many LNCs take on subcontract work while remaining clinically active. Other LNCs who need help with their burgeoning businesses are happy to use subcontractors. Yet how much do LNC courses teach about these roles? How prepared are LNCs for ethical contracting and subcontracting?

This Roundtable explores communication styles, contracting practices, and expectations of both contractors and subcontractors. Using the information provided by the respondents, we also suggest how to contract and subcontract using recommended ethical practices.

INTRODUCTION

In our experience, no LNC course covers the actual process and expectations of contracting and subcontracting. The AALNC Principles and Practices

4th Edition (due out in Fall 2019) includes information about this aspect of LNC work in the chapter entitled The Independent LNC. But what about those who have contracted and/or subcontracted in the past? We asked LNC

colleagues at many points along the LNC business continuum to offer us anonymous details of their experiences.

We sent an email blast to request input to all AALNC members and posted it on

professional listservs. We felt questionnaire items might potentially influence or limit input, so we did not include them. We wanted respondents to express their personal experiences freely.

We collected, anonymized, and collated LNC responses over over nearly nine months. Sometimes we used direct quotes for emphasis. We have deliberately preserved some repetition to show the similarities expressed by many respondents.

The responses here may surprise you. Many expressed appreciation. As one respondent said, “Thanks for doing this. It’s going to be a great service for LNCs!”

HOW DOES IT BEGIN?

Any discussion of LNC ethical behavior should begin with the professional organization’s Code of Ethics. The AALNC Code of Ethics is the definitive statement on this and can be found on the website at www.aalnc.org.

“Subcontractors needed” says the email subject line. An LNC responds with a CV/resume as requested. After speaking with the LNC poster, the LNC agrees to a project working behind the scenes. Recommended practice is that both parties have a clear understanding about subcontract agreements, instructions and work product templates, deadlines, budgeted hours, invoicing, and payment.

Sadly, we did not hear this often: “Our firm has only used three contract LNCs who were with us at different times for several years. They worked only for us and there were no problematic issues for either the LNC or us. They submitted invoices every two weeks and we paid them promptly.”

COMMUNICATION

Once business is going well and more cases come in, perhaps including a case that is outside the contractor’s expertise, the LNC considers the option of engaging subcontractors. For the subcontractor, this can be a great way just to work cases without dealing with the business end of being an LNC, or supplement business during slow times.

Both novice and proficient LNCs work as subcontractors. Novice LNCs often want to learn but find themselves without many available mentors. We got many responses such as, “No one is going to mentor you for free...there are people you can hire for that” (not necessarily true), and, “I don’t have time to train subcontractors.” Many contractors are busy and feel they don’t have the time to mentor subcontractors. LNCs reported hearing, “I don’t have the time to teach you” after receiving an assignment. We suggest that a contractor who knows there will not be time to teach a new LNC should be honest

and not hire an inexperienced LNC in the first place. The contractor will be frustrated and the subcontractor will be discouraged by what appears to be a sudden change in the contractor’s behavior. If you do not have time to train, be up front about it.

POOR COMMUNICATION STYLES AND UNETHICAL BEHAVIOR

Expectations:

Many subcontractors responded about the process of sending CVs, having discussions with the contractor, but making it clear they had no experience in the case area. After being reassured “it didn’t matter,” the subcontractor was then “fired” or got responses citing incomplete work. Others responded, “The cases I got as a subcontractor were not always appropriate for me with my nursing experience.” To avoid this, the subcontractor should always ask about case focus before accepting an assignment.

Many subcontractors expressed they were not given enough information when hired or they had received incomplete instructions or guidelines before starting a job. They reported:

- + not getting any type of guidelines or templates prior to starting;
- + getting “no instruction” or “minimal” on what was needed;
- + being told work submitted was incomplete despite lack of instructions; and
- + being “berated” for errors in submitted work.

One subcontractor was told only to “Look at what I’ve done” and “pick up where I left off,” with no further instructions given. She goes on to relate:

“I completed the work ahead of schedule and submitted my chronology. Here is what happened during a long conversation following my submission:

AALNC and Ethics

The Code of Ethics and Conduct of the American Association of Legal Nurse Consultants (AALNC) establishes the ethical standard for the specialty practice and provides a guide for legal nurse consultants to use in ethical analysis and decision-making in their practice. It provides guidelines for the professional performance and behavior of legal nurse consultants. The esteem of this specialty practice of nursing results from the competence and integrity of its practitioners. Thus, AALNC sets forth this code to impart its ethical expectations for legal nurse consultants and to set the standards of accountability.” www.aalnc.org

- She critiqued everything I had done and stated why it was wrong.
- She never said anything positive about any of my work even though I had discovered two very essential items she had missed in the records.
- She insinuated that I had fabricated medical information even though I provided specific page numbers from the chart and documents.
- I was chastised for numerous formatting issues but had not been given instructions or guidelines.
- I was never paid for any work and seriously thought about abandoning my dream of working as an LNC.”

More about this topic under “Pay Rates and Timeliness.”

Recommended practice for contractors is to give subcontractors all required information to do the job correctly. This should include report templates to follow, the number of budgeted hours for the review, and a deadline date. If these are not communicated clearly prior to starting any case review, both contractor and subcontractor are set up for failure.

On the other hand, contractors emphasized that subcontractors must follow instructions. Contractor responses included:

- I gave the subcontractor a budget of four hours with clear instruction on issues to focus on in a review, but I got a bill for 12 hours! No call from the subcontractor on more hours needed—I paid for four.
- I’ve had subcontractors that don’t have the report completed by the deadline given and haven’t called to discuss with me. I don’t use them again.
- I once had a subcontractor accept an assignment, begin the work, then disappear with no response to any attempts to reach her.

Both parties must communicate regularly, especially when there are issues with the assignment. Neither should ever leave this until the deadline date.

Some LNCs reported communication being beyond mere miscommunication. For example, a contractor asked to see a work product after two hours of work

to determine if a subcontractor new to her was on track. The subcontractor wrote, “I received a nasty email saying, ‘the work was incomplete and that she can’t work with me.’ Of course it was incomplete! The contractor must have forgotten an incomplete work product had been requested. Unfortunately, we received multiple similar reports.

In each, the subcontractor was expecting an honest assessment of whether the project was on track and if not, possible suggestions for improvement. Instead, they were given only harsh, destructive criticism. A comment like “this work is not for thin skinned people who cannot take constructive criticism” is not an appropriate way to address a colleague; this is destructive and not constructive.

Responses from subcontractors also mentioned derogatory or condescending communication, such as, “You’re not ready to market yourself to attorneys,” giving a “Public berating for questions asked for advice,” “Being blamed for work that was not theirs but actually another subcontractor’s.”

WORK PRODUCT QUALITY

Some contractors said the work products received from even experienced LNCs “almost always contained errors,” and the contractor had to look over the review closely. Avoiding this is the reason a busy contractor hires a subcontractor. Subcontractors must remember that their work product will be representing the contractor whose name is on the report; contractors do need to be sure the work products they sign are defensible.

Both contractors and subcontractors struggle with report writing expectations. To address this concern, several contractors mentioned another option when evaluating potential subcontractors: request the subcontractor do a “test case review” then write a short report. Several contractors responded that this,



“I worked for a contractor who sent explicit templates and instructions for each assignment. She gave constructive criticism when needed and paid within one month of invoicing. I have recommended others to subcontract with her and their experiences have been the same. She is a credit to LNC contracting!”

or requesting a work product sample, gave a better indication of the potential subcontractor’s work and writing skills. Subcontractors appreciated this, since some contractors expected subcontractors to have BSN or higher degrees. This allows for a level playing field for all applicants.

Another area that received multiple responses from both contractors and subcontractors involved providing all templates, instructions, and guidance needed to set the subcontractor up for success. Some responses indicated “the contractor sent me various templates to follow with clear formatting for reports.” Obviously, spellcheck for grammar is a standard expectation but one that many subcontractors didn’t always use, as evidenced by work the contractors received.

Several contractors responded with multiple issues with errors, and citing incorrect or non-essential data in reports or chronologies. Contractors recounted “not getting an adequate report” and “having to redo it all” because it did not meet expectations.

It is important to note that not all subcontractors have had unfavorable experiences. Subcontractor responses spoke of both positive and negative feedback from contractors. Statements included “this LNC talked me through [my questions] and took the time to teach me” and “the LNC patiently taught me where I had gone wrong in my review. This was such a gift, and I learned a great deal from her.” Other comments were “It is great working

for a contractor that clearly spells out in detail how they want their reports completed” and “My most recent subcontracting job was one of the best. The case was in a nursing specialty that was not familiar to me (nursing home) but I was willing to give it a go. The contractor took the time to mentor me in what to look for in the records and was very supportive of my efforts to learn this different type of medical record. She never made me feel stupid when I asked questions. And she paid promptly, within 30 days after I invoiced.”

Understanding the budget Subcontractors wrote of pay conflicts when additional hours billed were for edits: “If the report received needed any edits, she’d send it right back and demand the subcontractor fix it but not pay them a penny more than the hours budgeted.” Contractors indicated their reason for not paying was “these edits would not be necessary had it been done correctly the first time.” Clarifying expectations can help avoid these conflicts.

CONTRACTS AND FINANCIAL ISSUES

A contract is an agreement between two parties and should reflect what is expected of each. Some subcontract agreements contain unenforceable clauses, such as non-compete clauses and clauses stating subcontractors will only be paid when the contractor is paid. Check your state for details, as these vary. A subcontract is not contingent on the contractor’s financial agreement

with the attorney. In our opinion, contractors who are unable to pay subcontractors within a reasonable billing period of 30 days should not be using subcontractors. Some subcontractors have waited six months or more to be paid. Other subcontractors have resorted to hiring a debt collection agency to recoup an outstanding invoice.

Read the contract carefully! Several subcontractors cited outdated subcontract terms.

- I was paid the same subcontract rate for four years, but the contractor had raised her rates three times during that period
- Subcontractors who have worked with this contractor for a few years earn pennies on the dollar, while she is charging five times the rate in the original subcontract.

Subcontractors should ask for an updated agreement if they continue working with a contractor for an extended period covering several years.

CONTRACT RESTRICTIONS

Some examples cited include:

- Not doing any LNC work in any state where subcontract work had been done, until either one year after the case went to trial with a verdict and all appeals were exhausted or one year after a case settled out of court
- A provision that if any report the subcontractor wrote resulted in the client losing the case, the subcontractor could be held financially liable



SBA and SCORE

An LNC who has never been in a position to manage people would greatly benefit by taking management and business etiquette courses. These are readily available at local colleges and universities. There is also an abundance of books on these topics as well as unlimited internet sources. In addition, the following two organizations are reliable resources for small business owners:

- Founded in 1953, the U. S. Small Business Administration (SBA) was created through the Small Business Act of 1953. It is an independent agency of the federal government whose purpose is to aid, counsel, assist and protect the interests of small business concerns. The SBA provides free counseling and low-cost training to entrepreneurs just venturing into the business world and established small businesses across the nation. www.sba.gov accessed May 2019
- The Service Corps of Retired Executives (SCORE) is resource partner of the U. S. Small Business Administration (SBA), SCORE has helped more than 11 million entrepreneurs through mentoring, workshops and educational resources since 1964. SCORE offers courses and webinars (live and on-demand) on a wide variety of topics to help you become successful in business. The organization even offers a mentoring program for those who seek this support. www.score.org accessed May 2019

- ♦ The noncompete was for two years from the last day of work, anywhere in the U. S. Basically I could not work for an LNC or do independent LNC work anywhere for two years after the case!

Noncompete clauses are unenforceable in many states. Check. See also below, Pay Rates and Timeliness

Subcontractors also cited other unfavorable terms in their agreements. "There was no provision in the subcontract for rush fees for the subcontractor, but the contractor was charging the attorney a premium rate for rush services I was providing." This practice is not illegal but is certainly unethical.

OTHER CAVEATS

Subcontractors must be aware of pitfalls when approached to work as a "subcontracted expert." The contractor has the

ultimate responsibility for a subcontractor's work product; but a contractor who had been able to fulfill this requirement would be the expert! We will explore this topic in a future issue.

Recommended practice is to always read a subcontract carefully, be familiar with all the terms, and do not sign any agreement that will remain binding for an unspecified period of time.

Contractors must ensure that they do not inadvertently make subcontractors employees. An organization that has the most current advice on subcontractor vs. employee is the Small Business Administration (SBA). (*Ed. note: See also Murray & Tarkington, p. 26*)

PAY RATES AND TIMELINESS

Subcontractors also recounted ethically-questionable practices from contractors when it came to

pay rate and timeliness of payment after delivering a work product. Remember the subcontractor who was chastised and never paid for her work? She also reported she had only been paid a very nominal fee (22% of the contractor's hourly rate). Other subcontractor responses also described dubious or questionable financial experiences:

- A friend works for pennies on the dollar subcontracting for well-known contractors.
- I learned a contractor has raised their rates three times since I signed my subcontract agreement, but I am still being paid the original rate. When I questioned her, she said "You are being paid according to what you agreed by signing the contract. I am under no obligation to raise your compensation."
- I did not get paid until the contractor got paid plus a wait of 60 days or more after that. [This was mentioned by many respondents.]
- When I started out doing LNC work, I signed a contract where you had to buy over \$500 worth of resource/reference materials that the contractor required you had to use (they did not reimburse the cost).
- An LNC charged an attorney a "finder's fee" for my services as an expert witness. I then billed the attorney directly for my retainer. The attorney told me the LNC had already billed him my retainer and for some services already rendered. I had not even read the chart yet.

- The contractor charges a premium rate for work requested last minute (e.g., case screening, DME [defense medical exam]) but pays the subcontractor regular subcontract rate.
- A subcontractor makes a "judgment call" to stay with a frightened client after a DME, considering client safety while waiting for transportation in an unsafe area. The subcontractor called the contractor and explained the reason for doing this, but the contractor refuses to pay the subcontractor for the time waiting.
- A contractor quotes an amount lower than what the attorney is charged to justify paying the subcontractor a lower amount. "I pay you \$50.00/hour because I charge the attorney \$110/hour." Then the subcontractor finds out from an inadvertently unredacted string of emails that the contractor charges the attorney \$160/hour.

THE POSITIVE SIDE OF CONTRACTING AND SUBCONTRACTING

It is important to note that not all subcontractors have had negative experiences.

- Subcontracting is a great way to get to work cases but not have to deal with the business end of being an LNC, or just to supplement your own business during slow times. It is important to remember that your work product will be representing the contractor. It is great working for a contractor who clearly spells out in detail how they want their reports completed.

- I worked for a contractor who sent explicit templates and instructions for each assignment. She gave constructive criticism when needed and paid within one month of invoicing. I have recommended others to subcontract with her and their experience has been the same. She is a credit to LNC contracting!
- My most recent subcontracting job was one of the best. The case was in a nursing specialty that was not familiar to me (nursing home) but I was willing to give it a go. The contractor took the time to mentor me in what to look for in the records and was very supportive of my efforts to learn this different type of medical record. She never made me feel stupid when I asked questions. And she paid promptly, 30 days after I invoiced.

SOME FINAL THOUGHTS ON ETHICS

This article has addressed common issues that arise as contractors and subcontractors conduct business and we've suggested some better practices for both. However, respondents revealed some practice behaviors that are concerning to the authors. Some would be considered inappropriate or poor etiquette but some are clearly unethical and even illegal. Sadly, it does not seem that these are isolated events, as reports came from respondents in various parts of the country.

Surprisingly, the intent to make another LNC look bad nearly always backfires. For example, as one respondent reported, showing a subcontractor's work product to others to show "how bad it was" doesn't reflect well on the contractor, especially when the others learn that the subcontractor was never given the correct records that contained the information needed for the assignment. Most of the remaining scenarios in this article fit into this category.

Subcontracting is a great way to get to work cases but not have to deal with the business end of being an LNC or just to supplement your own business during slow times.



Listservs are a great way to connect with other professionals and we highly recommend that LNCs join and participate in discussions. However, good manners are of utmost importance. Moderators of these listservs do a great job of monitoring them but it can be a challenging task. We again address issues of how we treat each other, both publicly and privately. When you post on a listserv, always keep in mind that others are watching. You would be well-advised to be polite and appropriate at all times. Going off-list to address an individual personally is always an option.

Be aware that the LNC asking a question in this setting may actually be very experienced with the topic but is either asking if there has been a

change in recommended best practices or simply asking if another LNC has seen a similar circumstance. Unfortunately, some respondents reported being publicly attacked for asking these questions. Attacking another LNC on a public listserv is merely another example of intent to make someone look bad. Everyone has a professional reputation to protect and all LNCs must be mindful that public defamation of another can lead to charges of slander and libel. At the same time, hundreds of individuals may have seen the inappropriate post. It is more likely that the original poster is viewed as far more credible than the attacker. Remember, the persona you present on the listserv will be

evaluated by potential contractors and subcontractors.

Derogatory innuendos are always inappropriate; the speaker can hurt the other's LNC business. We were surprised to hear how many people reported threatening behavior by contractors, subcontractors, and LNCs in general. Responses received included:

- ✦ No one in this business is going to mentor you for free. You have to pay someone to do that.
- ✦ You're better off crashing and burning with me than with an attorney. Word gets around. (veiled threat)
- ✦ If you had given this work to Jane Doe, LNC, you would never work again.
- ✦ You are not ready to work with an attorney.
- ✦ Asking that question shows me you are over your head.

Comments such as these are discouraging and self-serving. Besides being inappropriate, they do nothing to support the LNC profession.

Some contractors recalled working with subcontractors who later presented the

Listservs are a great way to connect with other professionals and we highly recommend that LNCs join and participate in discussions.



contractor's samples as their own work product when marketing for other work.

- An attorney client called me to say my subcontractor had approached him to become her client. Because of this unethical behavior, the attorney advised me to fire the subcontractor.

Does any of this sound familiar to any contractors? We received several similar responses. There is no way to ensure this will never happen, but all should be aware this behavior is unacceptable in the legal world. It boils down to ethics and integrity.

Independent LNCs often market to attorneys to develop business. All nurse consultants should expect and understand that attorneys receive these solicitations on a regular basis. In general, the marketing goal is simply to locate a client in need of your services. Some consultants who are working with a given attorney needlessly view these marketing efforts as a threat. Businesses have a right to market and attorneys have a right to consider hiring different LNCs.

CONCLUSION

Many LNCs start by working as sub-contractors. They rely on the knowledge and skill of a contractor to assist them in "learning the ropes" after completing an LNC course. As nurses, we are familiar with the concept that we start learning when we leave the classroom. But the experiences of some contractors and subcontractors are far from the collegial working environment they expected from peers. Thank you to the many contributors of this roundtable who have been willing to share their wisdom in hopes of advancing and refining contracting and subcontracting processes to elevate LNC practice.

MOVING FORWARD

We have not found similar reports in the literature. We feel this beginning effort has only scratched the surface, and encourage any LNC to share more contracting and subcontracting stories with us. You may email our confidential address at LNCethics@GreenLNC.com. All responses will be treated in the strictest confidence and will be used as a roundtable update in a future edition of the JLNC.

REFERENCES

American College of Emergency Physicians/ Emergency Nurses Association. (2010). Triage Standardization: Joint Statement by the American College of Emergency Physicians and the Emergency Nurses Association. *Annals of Emergency Medicine*, 56(4), 451



Patricia Ann "Stormy" Green, RN, BSHS, RNFA

A nurse for well over 40 years, Stormy has extensive involvement in perioperative services, specializing in heart and vascular surgery in addition to orthopedics, general, OB/GYN, urology, plastics, and more. She also has knowledge in PACU, Pre-op, GI Lab, and numerous other areas such as women's health. Stormy functioned in various roles

in the OR including clinical nurse, RN first assistant, educator, and administrator. Her company offers services throughout the nation for both plaintiff and defense attorneys. A member of the JLNC Editorial Committee since 2014, Stormy loves teaching and welcomes opportunities to collaborate and share her expertise with others.

Stormy@GreenLNC.com
(714) 588-2418



Christie Paige, MSN, RN-BC, CLNC

With nearly thirty years of experience as a registered nurse, Christie applies her extensive knowledge with health-related issues to the legal arena. The majority of her experience has been as a clinically active hospital nurse with expertise in med-surg, geriatrics, L&D, and same-day surgery. Christie has been an LNC for four years, transitioning to work full time as an LNC and per diem clinical work two years ago. She is a certified med-surg nurse through ANCC since 2006. Christie can be reached at christie@paigelegalnurse.com or (508) 292-2372.



Joanne Walker, BSEd, RN

is the owner of Clarity Medical Legal Consulting, founded in 2009. She has been a nurse for over 40 years and has extensive clinical experience in the Perioperative area as well as Nursing Management. She has worked as a Legal Nurse Consultant since 2007 and has testified as an expert witness.

Joanne has presented two webinars on the topic of research for AALNC and the WUOV chapter, and co-presented a webinar for the American Bar Association (ABA) in collaboration with AALNC. She is a volunteer member of the JLNC Editorial Committee.

Joanne maintains membership in several professional organizations, keeping up to date in clinical advances to retain her RN license and assist her clients with their needs in case review and research.

She can be contacted at Joanne@ClarityMedicalLegal.com



Communication is KEY when Working with Subcontractors

Christie Paige, MSN, RN-BC

Keywords: legal nurse consultant, subcontractor, communication, work product, mentoring

Building your LNC business using subcontractors is an attractive way to increase your business volume and income stream. However, finding and working with subcontractors can be frustrating and time-consuming if done without planning. A defined process for hiring and working with subcontractors creates a successful relationship. This article explores issues surrounding setting up for success when working with other LNCs.

INTRODUCTION

Once a business is going well and more case work comes in, or perhaps a case that is not in your expertise, you might

consider the option of hiring a subcontractor as a way to grow your business by increasing your case volume and income. For a subcontractor, it is a great

way to work cases but not have to deal with the business end of being an LNC, or to just supplement your own business during slow times.

How do you find a subcontractor? What qualities does one look for or need in a subcontractor? How do you get the report you need for your client when you're not the LNC writing it? Communication between the LNC and subcontractor is key in this scenario.

STRONG QUALITIES RECOMMENDED IN A SUBCONTRACTOR

All nurse consultants need top-notch writing skills: attention to grammar, sentence structure, format, spelling, and vocabulary. Translating a medical record to a concise report effectively is an invaluable skill. In addition to writing proficiency, consider how important these points are to you:

- Is a minimum number of years' experience in nursing or as an LNC required?
- Does education or degree matter?
- Will your rate of pay vary depending on experience?
- Are you willing to train subcontractors?
- How much training do you expect the subcontractor to need?

WHERE TO FIND A SUBCONTRACTOR?

Perusing legal nurse consultant groups, (both local and national), LinkedIn, Google, and affiliated group chat boards often yields many choices. Online LNC groups are a great resource for both novice and proficient LNCs to find both helpful advice and LNCs looking for subcontracting work.

Some LNCs will consider nurses with whom they work in clinical jobs, but who are not LNCs themselves. While these nurses may be experts in their nursing fields, they aren't always proficient in translating records review to required reports. They may need additional training or guidance. You, in turn, may find yourself doing many

Nurse consultants should know that hiring actually begins with the "Looking for subcontractors" posting. Pay close attention to the posting instructions.

edits to get the reports you need in the meantime.

Subcontracting is a great way for novice LNCs to find work. They want to learn, but might not have mentors available. Many contractors feel they do not have the time to mentor; they're busy, that's why they're hiring subcontractors! Be honest when hiring a subcontractor. If you don't have time to train, be up front about it when a potential subcontractor contacts you.

INTERVIEWS AND HIRING

Nurse consultants should know that hiring actually begins with the "Looking for subcontractors" posting. Pay close attention to your posting instructions. How much expertise does the contractor need in a nurse for a case review? Give specific instructions on how to contact you. Remember that this initial step is how experienced hiring LNCs evaluate how well a potential applicant can read and follow instructions. Avoid unpleasant surprises later: If an applicant doesn't do that, some LNCs may not consider them at all.

Contractors should have a process of evaluating applicant work products. Interview applicants so you both get a sense of the other's expectations. Often, a contractor will request a work sample for review. However, there is no way to reliably ascertain whether the work product is actually the applicant's work unless the applicant comes to you with references from known colleagues. One way to evaluate skills is to see how an applicant does with a short trial case on deadline.

The interview process is a two way street. Aspiring subcontractors are also interviewing for a contractors they can work for. Be open and clear about your requirements for experience and learning level. Never let new subcontractors get caught in a case review they do not feel qualified to do. It is better for all concerned to turn down an applicant than to risk a potential bad outcome for both parties, and subcontractors will appreciate your honesty.

PAY

Many new LNCs balk at the lower pay they are offered for subcontracting, but remember: As a new nurse, you started at the bottom of the pay scale, too. Rates of pay for subcontracting will depend on the complexity of the task and experience level, but will not equal the rates charged by an experienced nurse consultant. A new LNC can expect comparatively less when more training is required.

With any review, both parties should be clear on the budget before the start of the job. The contractor determines the hours by how long a proficient LNC should take to do the case review. Make it clear at the outset that subcontractors who find they will need more hours than agreed should always contact the contractor immediately to discuss this and negotiate the hours prior to continuing, or likely not be paid for the excess at the end of the assignment. New LNCS will likely find they will need to put in more hours than is budgeted as they learn by doing. Let

As a subcontractor becomes more proficient, a pay raise should follow. If you're a contractor with good subcontractors, show your appreciation and earn their loyalty by giving them raises!

them know that you will support them but do not expect to pay them for their learning curve.

As a subcontractor becomes more proficient, a pay raise should follow. If you're a contractor with good subcontractors who produce reports requiring minimal edits timely, show your appreciation and earn their loyalty by giving them raises!

SETTING UP FOR SUCCESS

LNCs should reflect on how they treat their subcontracting relationships. Neither a good subcontractor nor a good boss is easy to find. Both parties need to respect the others' position and do the best job possible for success.



When you find a good subcontractor, expect to do some teaching (at least in the beginning), give constructive feedback, and show your appreciation once a relationship is established. The time and effort it takes to find the "right fit" will be wasted if you do not show your subcontractors appreciation and they walk away. It is much easier to continue to work with the same people than to constantly be teaching new ones.

Developing a process, respecting the process, and following it is very important. The contractor lays out expectations and the subcontractors are well-informed. The time and effort to do right it pays off for both parties.

COMMUNICATION IS KEY

In all working relationships, communication is key. The question is how to get another person to produce a work product that meets your expectations. To get optimal results, the subcontractor must have all information to be able to do a proper job.

Think about the work from the subcontractor's standpoint. How will you assign a case review? How often will you call to check in during the review process? Do you review the case together at the start? Are you available for questions as it goes along?

Do you provide work templates or outlines, or is it acceptable to let subcontractors write reports as they see fit?

To ensure the final report is acceptable, the contractor needs to communicate clearly or, better yet, give templates, exemplars, and instruction on expectations. More guidance and instruction ensures better results. Areas to cover would include issues of formatting, spacing, grammar, etc.

Expect to teach any subcontractor at first, and know that revisions will be needed until the subcontractor learns your style and expectations. Develop a followup process with your subcontractors so you can feel assured they are working on the review and are doing it to your satisfaction. It's a good practice to have the subcontractor send in interim work to be sure it is progressing as expected. This is a good way to catch any issues before too many hours are wasted.

Never give a subcontractor the same deadline date as work due to the attorney nor assign the case and then not talk to the subcontractor until the due date. Expect to need time to proof the report and plan time for edits. Nothing is worse than getting a report back that is due to the attorney and now needs major edits or needs to be redone because no check-ins have taken place along the way.

Make sure your subcontractors know not to hesitate to ask questions. It is better to ask a question than to wait until the end and have it all wrong. Help your subcontractors develop their own process for what to do before handing in any report. This includes expecting to do rewrites to get to the final report, formatting spacing, spell check, and having some-

one else proofread it. These simple steps will help them learn to produce the best possible report.

CONCLUSION

Plan for success! Communication between the contractor and subcontractor is key to a successful outcome for both. Some suggested best practices to develop for working with subcontractors include:

Contractors:

- Have a process: in hiring, assigning and following up on reviews and reports
- Have guidelines or templates and exemplars for subcontractors
- Make expectations clear: budgeted hours, deadlines, report formatting

- Expect that some level of teaching or guidance will be required, at least at the start of the relationship
- Have an open line of availability and communication

Subcontractors:

- Be clear with your experience – both nursing and legal nurse consulting
- Decline cases that are out of your comfort zone or expertise
- Respect deadlines and budgeted hours; if you don't know them, ask before you start
- Have open communication with the contractor for any issues or concerns

Working with subcontractors in your LNC business can be a rewarding experience as well as a way to build your business and income. When done using

best practices and developed processes, it's rewarding for both contractor and subcontractor.



Christie Paige, MSN, RN-BC, CLNC

With nearly thirty years of experience as a registered nurse, Christie applies her extensive knowledge with health-related issues to the legal arena. The majority of her experience has been as a clinically active hospital nurse with expertise in med-surg, geriatrics, L&D, and same-day surgery. Christie has been an LNC for four years, transitioning to work full time as an LNC and per diem clinical work two years ago. She is a certified med-surg nurse through ANCC since 2006. Christie can be reached at christie@paugelegalnurse.com or (508) 292-2372.

GET PAID WHAT YOU ARE WORTH

Whether you are in business for yourself or working for a company, Nurse Life Care Planning offers you the opportunity to enter the ranks of the highest paid nurses in the country!

Enroll now in the courses that will change your life while you continue to do what you love. **Kelync's Setting the Standards in Nurse Life Care Planning® Course** will prepare you for certification in your new career.



KELYNCO
Life Changing, Life Care Planning

- Courses are approved by ANCC for 120 contact hours
- Kelync is the only program taught using the nursing process at its core
- **The Live Course is Back!**
- Or Totally Online and Totally Convenient!
- 4 Live Webinars are added to the online course to help you with your studies

All courses are taught by the founder of the American Association of Nurse Life Care Planning, Kelly Lance, MSN, APRN, FNP-C.

Kelync courses offer career options:

- Nurse Life Care Planning
- Medicare Set-Asides

www.kelync.com

Mention this ad and receive the Medicare Set-Aside Course FREE with your course registration of Life Care Planning!



Deciphering Subcontracting Agreements

Michele Smeltzer, MSN, RN, CEN

Keywords: Subcontracting, legal nurse consulting, work agreement, work contract, noncompete

Working as or with a subcontractor usually requires a subcontracting agreement. These agreements can be confusing or intimidating. This article provides information for the LNC to better understand subcontracting agreements.

INTRODUCTION

Seeking work as a subcontractor is a way to obtain additional work or to build your skill set. Whether you're a new or experienced LNC, most subcontracting work requires a signed subcontracting agreement. Agreements can vary in length and detail, however

there are some basic clauses one should be aware of and understand before signing a contract.

ARE CONTRACTS REQUIRED?

It is rare to obtain work as a subcontractor and not be provided with a

subcontracting agreement. If you were not offered one by the contractor, you should ask for or write a letter of understanding. Lorie Brown, R.N., M.N., J.D., nurse attorney, does not recommend writing your own contract. The letter of understanding defines the services that you are hired to do. Lorie

suggests the letter to include, but not limited to:

The budget for the project Be aware of the timeline and do not over-work the case. You cannot bill for your learning curve.

Timeframe and/or deadline for when the work is to be completed If you find that more time is required than the agreed amount, contact the attorney or person that hired you, and ask to redefine the time. You do not want to send an unexpectedly large bill OR disrupt the client's timeline for filing your report.

Clear understanding of project scope It is very important to understand what you are supposed to do. If you are screening for merit and you find the case has no merit, you will not be completing a chronology or writing a report.

Retainer and/or fees Some clients will agree to pay a retainer; some will not. If you are not working on retainer, be sure the contract or letter of understanding outlines billing procedures and the timeline for payment of work product. Clarify when your invoices are due and how soon after receipt you can expect payment. Be sure that your contract says you are working for the contractor, not the client. Therefore your invoice is to be paid promptly by the contractor, *not* whenever the client pays the contractor, which could be months or even never.

Mentoring Clarify whether your contractor has time to mentor you. You want to be sure that if your work is not what was expected you have the time and resources available to you to correct or improve it. Lorie Brown explains that although the term "mentoring" is not usually stated in the subcontracting agreement, it is important to identify if your contractor will have time for reviewing your work and offer feedback, if improvements are needed. Ms. Brown also points out that it is important to be

honest with your skill level and not to take on assignments that are out of your area of expertise or experience.

Katy Jones, LNC, provides an example of a Letter of Understanding, at <http://www.lnctips.com/letterunderstanding>

CONFIDENTIALITY

As nurses we are familiar with the concept of confidentiality. Confidential information can include, but is not limited to: processes and procedures, compensation, reference material, medical records, case information, and clients. Many agreements also state that any information regarding the case is not to be discussed with anyone in person, by telephone, or by email. This may also include posing questions on list serves, so clarify with the attorney

prior to posting a question regarding the case. Some agreements also state that the identity of the subcontractor will also remain confidential from the client. (Ed. note: See the article by Freedman and Rattigan in the June 2018 JLNC for critical information on your liability on this topic)

MALPRACTICE INSURANCE

Most subcontracting agreements require you to have malpractice insurance. Ms. Brown agrees that you should protect yourself by carrying your own personal policy. There are several companies that provide malpractice insurance for nurses, but not all are specific for the LNC. Some companies will provide a rider for self-employment, but they are not specific to LNC work. Nurse Service Organization (NSO) has riders spe-

Keep your business at your fingertips.

↳ **Business Assets** ↳ **Continuity of Services**
↳ **Engagement Management**



SUCCESS(ION) SOLUTIONS, INC.
The Consultants the Consultants Call

Mila Carlson
Phone: (815) 339-0390
mila@successionsolutions.us

Order Your Guidebook Today!
successionsolutions.us

The subcontractor's work is the property of the contracting entity, whether an individual or company. Therefore you cannot use that work product as a sample for your own purposes, even if redacted.

cific for LNC work. This can be found at <https://www.nso.com>.

WORK PRODUCT

Most agreements state that the subcontractor's work is the property of the contracting entity, whether an individual or company. Therefore you cannot use that work product as a sample for your own purposes, even if redacted. If you need a work product to use in the



future, there are courses and webinars that you develop a report or timeline for marketing or teaching. There is a list of resources at the end of the article.

NONCOMPETE AGREEMENT

The specifics of noncompete clauses vary greatly. A noncompete clause stipulates that the person agrees not to work for a competitor within the industry for a specified length of time and/or a geographical location. Typically noncompete agreements state that you will not accept any new work from your contractor's clients, on your own, for a period of two years. What this means to the subcontracted LNC is that you cannot accept additional work from such a client who contacts you directly. If a client contacts you directly, you need to refer the client to your contractor immediately, notifying the contractor directly. But read on.

ARE NONCOMPETE AGREEMENTS ENFORCEABLE?

According to Ms. Brown, each state has different laws regarding the enforceability of a noncompete clauses in subcontracting agreements. Agreements are subject to the jurisdiction of the state of the person seeking help from subcontractors. However, she explains that most states require noncompete agreements to be reasonable in time and distance. Many LNC subcontracting agreements to do

not specify a distance radius because many subcontractors work in different states. It is more common for the agreement to state that the subcontractor will not contact an attorney or firm for whom they have completed work for a stated period of time. This can also include attorneys and firms the subcontractor met while working for a current contractor.

DO YOU HAVE TO SIGN THE CONTRACT?

Ms. Brown states that just because you receive a contract you do not have to sign it as is. You have the right to negotiate. If the person hiring you will not negotiate terms, she suggests you have an attorney review the contract and discuss your concerns before you sign anything. An invalid portion of a contract does not void the entire agreement. Contract law varies greatly from state to state.

RESOURCES

There are many great resources available for the LNC. Some are free and some provide additional education and mentoring for a cost. Below are some resources.

Lorie Brown: www.empowerednurses.org

Katy Jones: www.lnctips.com

Pat Iyer: <https://legalnursebusiness.com>,
<https://lncacademy.com>

JLNC Spring 2015 The Business of LNC has sample agreement language and other very useful information on what to include in your agreements. <http://www.aalnc.org/page/journal-v2.0>



Michelle D. Smeltzer, MSN, RN, CEN is licensed in the state of Pennsylvania and Certified in Emergency Nursing. She has over 25 years experience in

Emergency and Medical Surgical Nursing, as staff, educator and manager. She is the owner of Smeltzer Consulting and offers consulting services. She can be reached at michelle@smeltzerconsulting.com

Test Your Case Screening Skills

CASE #3

Ms. Wadas has been experiencing reoccurring abdominal pain since 2014. Her PCP discovered she had a cyst on her ovaries on 11/19/2014. She had made so many trips to EMH in 2014 regarding her pain, she was escorted out of the hospital her last visit by the police department. On 03/28/18 Ms. Wadas went back to EMH with stomach pain. They performed bloodwork. She says EMH told her she had already received too much radiation so they discharged her. On 03/30/18 Ms. Wadas went to Mercy ED with stomach pain. They did a CT Scan, ultrasound, and X-rays and determined she had a 15 centimeter bubble cyst on her ovary. On 03/31/18 Dr. Brown performed surgery to remove the ovary. Ms. Wadas has a cyst on her other ovary, however it does not require removal of the ovary. Ms. Wadas will be following up with Dr. Brown on 04/10/18 as they want to check for cancer. Ms. Wadas is feeling much better.

She feels EMH was aware of her mental health history and drug addiction and they did not provide her with medical care she needed on 03/28/18.

Test Your Case Screening Skills

You decide: reject, or investigate?

CASE #4

George Brown called regarding his mother Nancy Brown; DOB: 1941. Nancy had right hip surgery at Mercy Hospital on 1/23/13 for a hip replacement. The surgeon was Dr. Anthony Clooney. After the surgery Dr. Clooney came out and said we had a problem and he cut thru a branch of her sciatic nerve. It so happened that there was a neurosurgeon in the next operating room, who came in and reconnected the nerve. Sharon says he has been very attentive and has stopped in to see her several times. Dr. Clooney has gone to Key West for vacation.

Nancy is still at Mercy and expects to be there another 10 days to two weeks. Then she will move to transitional care for another period of time. They have told her that she will have drop foot. That this might be permanent. That she will require two years of therapy for this. The doctor said the best scenario is that she make a 60% recovery. Currently she has lost feeling in her right foot. She is having difficulty doing any therapy for her hip because of the nerve problem. She is still in bed. They get her up for P.T. and to use a walker. She needs people to help her out of bed and to stand up. Sharon has her own Travel agency and lives alone. This has greatly impacted her life. The hospital is doing an investigation.

Check your answers on [page 25](#).



“Learn from the mistakes of others. You can’t live long enough to make them all yourself.”

– Eleanor Roosevelt

Errata:

Due to an editing error, the name of Lynn Visser MSN, RN, PHN, CEN, CPEN was omitted from the list of contributors to the June issue as an associate editor.

Updated contact information for the author of Emergency Department Triage: Not For The Faint Of Heart, Deb Jeffries RN, MSN-Ed, CEN, CPEN, TCRN, is debjeffriesrn@yahoo.com



Finding the Right Expert Witness for Medical Malpractice Cases

Kathy G. Ferrell, BS, RN, LNCC

Keywords: Rule 702 Federal Rules of Evidence, Daubert, like provider, qualifications, expert witness, testifying expert, expert location, vetting experts

Finding the right expert witness is an invaluable skill. Before presenting names to the attorney client, vetting for possible conflicts, effective communication, and availability are key skills to providing the attorney with the right expert for successful litigation outcome. Communicating with the attorney client to identify necessary credentials, location, and good working case knowledge are critical for the LNC to search effectively.

INTRODUCTION

Expert witness testimony is almost always necessary in litigation. An expert witness can make or break the case. Thus, finding the right expert witness for your case can be daunting but can greatly increase your worth to an attorney. Finding the right expert is a learned skill that, like others, can be achieved only through practice.

REGULATIONS

The use of professionals as testifying expert witnesses began in English common law. The current law, Federal

Rules of Evidence Rule 702 (FRE 702), reads: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

Most states use national standards of care to determine if medical negligence has occurred by a healthcare provider. However, six states believe that standards of care differ according to region and size of community and therefore,

have enacted laws that further define who may serve as an expert.

For instance, Tennessee's criteria require a plaintiff to present proof that the defendant violated the standard of care applicable in the community in which the care was given at the time care was given. Proof can come from an otherwise qualified expert who knows the standard of care in that or a similar community. "Community" is further defined as an area with a similar population or hospital with like number of beds in Tennessee or a state bordering it. The expert witness must also be a

“like practicing provider.” The references give a link to the Cornell Law’s list of state-specific regulations for expert qualifications.

SEARCHING

If an attorney, either plaintiff or defense, asks you to locate an expert witness, your first instinct might be to call the nearest school of medicine. However, do some research before you start.

Confirm the attorney’s request and ask if there are specific expert regulations in the state where the alleged injury occurred. Ask for deadlines or time limits for the expert’s review. If a legal nurse consultant (LNC) has not reviewed the medical records already, request a copy of the Complaint to have an understanding of case facts, including the date(s), provider name(s), and facility.

To help you identify potential “like providers,” learn all you can about the defendant(s) including:

- + medical schools attended
- + practice locations
- + board certifications
- + subspecialty training or fellowships

You should keep a file of names, contact information, and CVs of all experts used previously or who presented at seminars you attended. The right expert may already be in your file. If not, do you have a good relationship with any of your experts who might know someone who meets your criteria?

Medical schools are excellent sources. Names, CVs, phone numbers and email addresses are often provided on the school’s website. Most experts from academic centers respond best by email or through a departmental administrative assistant.

National, state, and local medical and nursing societies are also good sources. Specialty professional societies will sometimes maintain or publish a

Elizabeth Zorn, RN, BSN, LNCC

Knowing the rules

- Evidentiary rules set forth the minimum requirements for expert witness qualifications.
- For cases venued in Federal Court, federal rules apply; for cases in state court, applicable state rules apply.
- Rules may include criteria related to active clinical practice, similar credentials as defendant, or geographical location.
- Most medical malpractice and personal injury claims are in state court.
- In addition to the minimum requirements under the applicable rules, the managing attorney may have additional expert criteria for strategic reasons.

Locating potential experts

- The medical literature: authors of peer-reviewed journal articles, medical/nursing textbooks and clinical practice guidelines
- Academic medical center websites, which list physicians and MLPs by specialty
- Colleagues of prior or current experts
- Case law or jury verdict research
- Expert witness directories
- Expert witness services
- Medical-legal listservs and other professional contacts

Vetting potential experts

- Conflict screen pertaining to parties

- Fee schedule
- Clinical experience and credentials (CV)
- Publications and association memberships
- Familiarity with case clinical issues
- Prior testifying experience (depositions or trial)
- Has testimony ever been excluded (Daubert Motion)?
- Approximate percentage of plaintiff v. defense work
- Does the expert advertise, e.g., in expert directories, website, legal journals?

Maintaining an expert database

- Electronic folders or database sorted by specialty and sub-specialty
- Expert name, credentials, location, email/phone
- CV
- List of publications
- Attorney feedback re: expert (negative and positive)
- List of expert’s previous legal cases

Tips

- Discuss case issues with attorney prior to beginning any expert search
- Email seems to be the preferred means of communication
- If an attorney or colleague has recommended an expert, mention that person’s name in the subject line of an email, e.g. “legal case review – referral from Atty JB Smith.”

Keep a log of each contact. When you can't locate the right expert due to a small pool of unwilling providers, your attorney client may petition the court to search outside any regulated parameters, and will give your log to the court as evidence of multiple unsuccessful attempts.

directory of expert witnesses. If they don't, contact the executive director and ask for referrals; expect to get at least three. Brochures for annual professional conferences are available online and will provide speakers' credentials and presentation titles.

Professional organization websites often include the names of special interest committees. For instance, the American Academy of Emergency Medicine's website includes the Legal Committee, whose members write white papers and articles on current/recurring medico-legal issues related to emergency care.

Professional journals, such as the Journal of Legal Nurse Consulting or the American College of Surgeons, can give you leads, even if an author may not meet your specialty or locality criteria. For example, a search for articles written on heparin-induced thrombocytopenia (HIT) will provide articles written by hematologists, cardiologists, pathologists, and pharmacologists. Also, most medical research originates in academia. If your expert must be located in a smaller community, searching for an expert in published medical literature might be a waste of your time... or it might get you a lead.

The American Association of Legal Nurse Consultants' website allows you to search for experts by specialty and state. LNCExchange@yahoogroups.com includes a file of CVs from healthcare professionals who are willing to serve as experts. Although you can

also post your request for an expert, don't expect listserv members always to provide you with names instead of your doing some of the legwork.

There are referral services (e.g., The Expert Institute, JurisPro, SEAK, TASA) with directories of expert witnesses by profession, specialty, and state. These directories include experts from medical and non-medical professions and from large and small communities who have paid to be listed. Some attorneys will not use experts who advertise; check first.

Most independent LNCs do not have access to Lexis and other attorney services. However, Google Scholar includes case law from federal and state courts. A search for cases on a related issue, such as "failure to diagnose ...," will provide a case name, court, date, and discussion of the facts of the case, including names of treating physicians and expert witnesses. Review recent cases for possible experts.

Many professionals use LinkedIn, a professional networking website, to post interesting articles, research, job promotions, or newsworthy successes. Some also post CVs when they wish to be considered a leader in their fields. There are several groups dedicated to expert witnesses. Please refer to LinkedIn for further information,

What if none of these resources leads you to the right expert who meets your case requirements? Try an internet search for the names and locations of regional or community hospitals in a specific locality (if needed). Most hospital websites provide a physician directory by specialty. At this point you may need to resort to cold calling.

Keep a log of each expert that you contact. In some case when you can't locate the right expert due to a small pool of unwilling providers, your attorney client may choose to petition the court to search outside any regulated parameters. The attorney will need to provide the court your log as evidence of multiple unsuccessful attempts to locate a suitable expert.

VETTING

Part of locating an expert is the vetting process. Schedule a time to speak with the individual personally. Does the expert have a conflict of interest with any person, institution, parent company, or defendant company named in the suit? Be very sure to check that the expert has no conflicts with availability or attorney deadlines.

Consider asking these additional questions:

- ♦ Does the expert have specific knowledge and skill in the disease process, procedure, or issue in your case?



- How long has the profession been in clinical practice?
- What percentage of the expert's time is dedicated to clinical practice and/or teaching?
- Is the expert an effective communicator and willing to answer your questions regarding the standards of care in your case?
- How many times has the expert testified in the past 4 years?
- What percentage of the cases were for the plaintiff? For the defense? Does the expert show bias toward either?

Some experts misrepresent credentials or inflate their expertise, such as failing to disclose that their certifications or licenses have expired. Always authenticate credentials listed on the CV by checking online databases such as the American Board of Medical Specialties to ensure board certifications are current. Verify state licensure(s) and expiration dates.

Do an internet search to see if you can find prior testimony by the expert in other cases to detect inconsistencies. You will not want to refer an expert to your attorney whose past testimony conflicts with the attorney's position in the case.

Check for sanctions and other disciplinary actions. The National Practitioner Databank is a clearinghouse of information on sanctions by state licensing authorities, malpractice awards, and hospital disciplinary actions. However, the general public has no access to this databank. In lieu of this, the Federation of State Medical Boards website provides links for all 50 state licensing boards.

The federal government's Physician Compare site shows how physicians who accept Medicare payments score on specific Medicare quality measures. A physician who scores poorly would not be acceptable. You might consider

patient online reviews found on sites such as HealthGrades.com. However, take these with a grain of salt; remember these patient reviews are not always quality scores. Negative comments or ratings may be related to personality conflicts, wait times, staffing issues, pricing or other factors not related to quality of care or expertise.

Locating the right expert might remind you of looking for needle in a haystack. Remember that many cases are won or lost on expert testimony. Finding the right expert can be daunting, but like any other LNC skill, the more your practice, the easier it gets. The LNC who excels at locating the right expert will be invaluable to the attorney.

REFERENCES

Civil Procedure – State Laws. Retrieved from https://www.law.cornell.edu/wex/table_civil_procedure Retrieval date 06/12/19

DiCecco, K.L. (2008). The expert's CV: a tool you can use. *Journal of Legal Nurse Consulting*, 19(4), 23.

Federal Rules of Civil Procedure. Retrieved from https://www.uscourts.gov/sites/default/files/ev_rules_eff_dec_1_2018_0.pdf Retrieval date 06/12/19

Kaminski, S. M. (2015). My expert is better than your expert: tips for LNC expert witness location. *Journal of Legal Nurse Consulting*, 26(3), 26 – 30.



Kathy Ferrell, RN, BS, LNCC has been an independent legal nurse consultant for 19 years and an LNCC since 2008. She has been an RN for over 35 years and worked in private physician offices, hospitals, and health insurance. She provides LNC services to plaintiff and defense attorneys nationwide regarding medical malpractice, personal injury, product liability, healthcare fraud and bad faith insurance. Kathy has been an active member of AALNC since 2005 and has served in multiple leadership roles at the state and national level. She can be contacted at kathyferrell@gmail.com



Check Your Answers

Test Your Case Screening Skills Page 21

Case #3 Disposition: Reject

Even if her ovarian cyst should have been diagnosed at the ED visit on 3/28/18, the outcome would have been the same.

Case #4 Disposition:

Case was investigated and put into suit after favorable expert orthopedic review, concluding that complete transection of the sciatic nerve (as opposed to compression, stretching or nicking of the nerve) during hip replacement is not an acceptable risk. As a result of her sciatic nerve injury, the client developed permanent foot drop, an altered gait and an insensate foot requiring amputation of the great toe due to foot ulcers. Her work as a travel agent leading tour groups was significantly curtailed. Case settled just prior to trial for seven figures.



Tax Implications for Legal Nurse Consultant 1099 Employees and Employers

Elizabeth Murray BSN, RN, LNCC

Kirsten Turkington, DNP, APRN, FNP-C, AFN-BC, CEN, CNLCP

Keywords: Independent contractor; 1099-MISC; employee; tax; self-employment tax

Legal nurse consultants may be independent contractors, hire independent contractors, or both. Many business owners have advisors for tax preparation, e.g., enrolled agent (such as a certified public accountant or attorney), or a limited representative (such as a tax return preparer). While it is always a good idea to seek the advice of an experienced and knowledgeable tax advisor, a small business owner should have a basic knowledge of the implications of self-employment taxes.

IRS DEFINITION OF INDEPENDENT CONTRACTOR

An independent contractor is a worker who contracts as an individual with

an employer to provide specialized or requested services on an as-needed or project basis.

The IRS considers a person or entity an independent contractor or employee if

the employer “has the right to control or direct only the result of the work and *not what will be done and how it will be done* (Internal Revenue Service, 2019).” The administrative implications fall to the employer: the employer must file an

IRS Form 1099-MISC for each service provider paid at least \$600 during the year for services performed by someone who is not their employee (Internal Revenue Service, 2019).

This also means that if as a contractor you control your provider's (subcontractor's) services (*what and how work is done*), that makes that provider an employee. This is important because once your provider is defined as an employee, you, the employer, must withhold and pay a variety of taxes such as income, Social Security, Medicare, and unemployment tax (Internal Revenue Service, 2019). Read on for clarification.

COMMON LAW RULES (3-FACTOR TEST)

Determining independent contractor status falls to all parties as part of the evaluation process. The service provider, the person or company hiring them, and the IRS all must weigh the Common Law Rules to determine if the service provider is an employee or an independent contractor. In general, an individual is an independent contractor if the payer controls the results of the work, not what or how the specific work will be completed. (Internal Revenue Service, 2019)

The three categories of evidence are:

1. Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job? What type of instruction does the employer provide to the independent contractor?
2. Financial: Are the business aspects of the worker's job controlled by the payer?
3. Type of Relationship: Are there written contracts or employee benefits? Will the relationship continue and is the work performed a key aspect of the business? (Internal Revenue Service, 2019)

COMMON LAW 20-FACTOR TEST

Most certified public accountants are familiar with the Common Law 20-Factor Test, which predates the Common Law Rules, or three-factor test. It has more specific examples, such as whether the employer dictates hours or days of work; the requirement to work on company premises; who bears the cost of travel or business expenses; whether workers perform most of their work using company-provided equipment, tools, and material; and whether the workers can unilaterally terminate their work for a company without liability. In addition to reviewing these different factors, individual states may also have their factors or tests to determine a worker's classification. Currently, 43 states have a memorandum of understanding with the U.S. Department of Labor Wage and Hour Division (WHD) to avoid misclassification. (U.S. Department of Labor, 2019)

DETERMINATION OF WORKER CLASSIFICATION

Critical evaluation is necessary to define the payor/provider relationship. Proper identification of the relationship is essential to avoid penalties.

Employer misclassification is often accidental. However, misclassification can be an intentional decision to avoid taxes and labor fees (Department for Professional Employees AFL-CIO, 2016). While there may be different

factors that influence whether the IRS will consider a service provider either an employee or an independent contractor, no one factor is most important in deciding. Rather, the IRS makes its determination based on the "entire relationship." If it is not clear after reviewing the Common Law Rules, a hiring agent or service provider can file an IRS Form SS-8, and the IRS will review the facts and officially determine the worker's status (Internal Revenue Service, 2014) (Internal Revenue Service, 2019)

MAINTAINING INDEPENDENT CONTRACTOR STATUS

The Society for Human Resource Management publishes checklists for service providers and employers to ensure that independent contractor status is preserved. Some of the points from the SHRM audit checklist most relevant to LNC independent contractors are:

- Develop a written agreement with an assigned specific scope of work for a specific duration.
- Employers should require the contractor to supply his or her own worker's compensation insurance.
- Employers should not pay contractor expenses. Businesses pay the expenses, and expenses should be built into the contract for the cost of the entire job.
- Employers should not provide continuing education training; they should only provide training specific to the job or company procedures.

In general, an individual is an independent contractor if the payer controls the results of the work, not what or how the specific work will be completed. (Internal Revenue Service, 2019)

- Employers should require documentation demonstrating an independent contractor relationship, such as a copy of the service provider’s business or professional license, copy of insurance certificates, and a copy of the contractor’s business card and stationery.
- Employers should require the contractor to complete Form W-9 with the correct name and taxpayer identification (TIN) which can be either a Social Security number (SSN) or an employer identification number (EIN).
- Independent contractors should not complete an I-9.
- Employers should not provide an employee handbook to the independent contractor.
- Employers should not allow independent contractors to enroll in company-sponsored benefit plans.
- Employers should not issue company business cards, employee ID badges or facility keys to contractors.
- Employers should not conduct performance evaluations of independent contractors similar to employee evaluations. Companies should require deadlines and results and can require contractors to follow job and company rules. (Society for Human Resource Management (SHRM), 2018)

TAX OBLIGATIONS

An employer of independent contractors must keep an IRS Form W-9 Request for Taxpayer Identification Number on file, and file a Form 1099-MISC Miscellaneous Income each year the worker is paid \$600 or more. (Internal Revenue Service, 2018)

The independent contractor receives a copy of the Internal Revenue Service (IRS) Form 1099-MISC as a report of each year’s income instead of a W-2. These earnings are subject to Self-Employment Tax.

An employer of employees is responsible for understanding the taxes which must be withheld, deposited, and reported, such as federal income tax, social security and Medicare taxes, and Federal Unemployment Tax (FUTA). Employees get W-2 forms from their employers (Internal Revenue Service, 2019).

MISCLASSIFICATION CONSEQUENCES

Employee misclassification causes significant tax revenue loss for the IRS. Additionally, a misclassified employee loses vital employment benefits and protections otherwise covered under the Fair Labor Standards Act (Department for Professional Employees AFL-CIO (DPEAFL-CIO), 2016).

According to the CPA Journal, a worker classification audit by the IRS or a state department of revenue is often sparked by an investigation by the Department of Labor (DOL), which uses its own “economic realities test.” (Messina, 2019) Employees who feel they have been misclassified as independent contractors when they should be classified as employees can file formal complaints.

The Department of Labor maintains a whistleblower protection program for complaints. In states with an approved state OSHA plan, employees may file both federal and state OSHA complaints. Federal penalties can be severe. In cases of unintentional misclassification by the employer, the DOL may impose financial penalties. If the

Civil Penalties	
IRC Section	
6651	Failure to file: 5% per month during the period of failure to file employment tax returns, up to a maximum of 25%.
6656	Failure to make timely deposits of taxes: 10% if tax deposit is past due more than 15 days, and increases to 15% if not paid within 10 days of a delinquency notice.
6662	Underpayment of tax: 20% of the underpayment of tax attributable to a substantial understatement of tax or negligence.
6663	Civil fraud: 75% of the underpayment that is attributable to fraud.
6672	Willful failure to collect and pay tax: 100% of total tax not collected and paid.
6721	Failure to file correct information returns: \$50 per return, up to a maximum of \$250,000 per year.
6722	Failure to furnish correct payee statements: \$50 per failure to provide Forms W-2 and 1099 employees and independent contractors, respectively.
6723	Failure to comply with other information reporting requirements: \$50 per failure, with an aggregate maximum of \$100,000 per year.
Criminal Penalties	
7202	Willful failure to collect or pay tax: maximum of \$10,000 and imprisonment for not more than 5 years.
7204	Willful failure to provide statement to employees: maximum of \$10,000 and imprisonment for not more than 1 year.

Exhibit 1. IRS Code Penalties

IRS suspects intentional misconduct or fraud, they will assess additional financial penalties and even criminal penalties for each misclassified worker. (Messina, 2019)

IMPLICATIONS FOR LEGAL NURSE CONSULTANTS

Whether a legal nurse consultant is a business owner or an employee, role understanding is essential. Regardless of specific role, a legal nurse consultant must understand the tax implications of both working as a contractor and hiring subcontractors. Nurse business owners should consult tax preparation and business law professionals for proper guidance. Legal nurse consultants must be well-versed in business basics to properly identify actions that affect both their own employment status and that of those they hire. Intentional or not, an employer's misclassification of a service provider carries serious, yet avoidable, consequences. When in doubt, employers or service providers can file an IRS Form SS-8 to receive a formal decision from the Internal Revenue Service.

BIBLIOGRAPHY

Department for Professional Employees AFL-CIO (DPEAFL-CIO). (2016, June 1). *Misclassification of Employees as Independent Contractors Fact Sheet*. Retrieved from Department for Professional Employees AFL-CIO (DPEAFL-CIO): <https://dpeaflcio.org/programs-publications/issue-fact-sheets/misclassification-of-employees-as-independent-contractors/>

Internal Revenue Service. (2014, May 1). *Form SS-8 Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Retrieved from Internal Revenue Service: <https://www.irs.gov/pub/irs-pdf/fss8.pdf>

Internal Revenue Service. (2018, October 1). *Request for Taxpayer Identification Number and Certification*. Retrieved from Internal Revenue Service: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

Internal Revenue Service. (2019, January 28). *About Form 1099-MISC, Miscellaneous Income*. Retrieved from Internal Revenue Service: <https://www.irs.gov/forms-pubs/about-form-1099-misc>



Internal Revenue Service. (2019, May 3). *Employment Taxes*. Retrieved from Internal Revenue Service: <https://www.irs.gov/businesses/small-businesses-self-employed/employment-taxes>

Internal Revenue Service. (2019, January 1). *Form 1099-MISC Miscellaneous Income*. Retrieved from Internal Revenue Service: <https://www.irs.gov/pub/irs-pdf/f1099misc.pdf>

Internal Revenue Service. (2019, February 15). *Independent Contractor (Self-Employed) or Employee?* Retrieved from Internal Revenue Service: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>

Internal Revenue Service. (2019, March 26). *Independent Contractor Defined*. Retrieved from Internal Revenue Service: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined>

Messina, E. P. (2019). *Employee Versus Independent Contractor: The IRS and Department of Labor's Focus on Worker Classification*. *The CPA Journal: The Voice of the Profession*, 7. Retrieved from <https://www.cpajournal.com/2019/02/11/employee-versus-independent-contractor/>

Society for Human Resource Management (SHRM). (2018, February 6). *Independent Contractor: Audit Checklist for Maintaining Independent Contractor (IC) Status*. Retrieved from SHRM: https://www.shrm.org/resourcesandtools/tools-and-samples/hr-forms/pages/cms_020334.aspx

U.S. Department of Labor. (2019, May 01). *Wage and Hour Division State Enforcement and Outreach Coordination*. Retrieved from U.S. Department of Labor: <https://www.dol.gov/whd/state/statecoordination.htm>



Elizabeth Murray BSN, RN, LNCC is an independent legal nurse consultant with and owner of Elizabeth Murray Consulting LLC, a consulting firm in the Northern Virginia/Washington DC area, primarily consulting on defense cases in long term care and medical malpractice. She is a former US Army officer and has extensive experience in adult and pediatric critical care and emergency nursing. She has been working in the legal nurse consulting field for fifteen years and currently serves as AALNC President. She can be contacted at murraylegalnurse@yahoo.com



Kirsten Turkington, DNP, APRN, FNP-C, AFN-BC, CEN, CNLCP is an independent Family Nurse Practitioner and owner of North Scottsdale Health PLLC, a mobile medical clinic in Scottsdale Arizona, specializing in primary care and life care planning. Dr. Turkington is adjunct faculty with Grand Canyon University's graduate nursing program focusing on nursing foundations, practice improvement, evidence-based practice, and translational research. She is board certified as an Advanced Forensic Nurse and regularly consults with attorneys, law enforcement and government agencies across the United States on a variety of forensic issues. She can be contacted at Kirsten.Turkington@Outlook.com

THE JOURNAL OF
**Legal Nurse
Consulting**

Looking Ahead...

XXV.4, Winter 2019 — Nursing Practice and New Nurse
Author Supplement

XXVI.1, Spring 2020 — Implantable Devices

XXVI.2, Summer 2020 — Roles in Expert Witnessing, Revisited

XXVI.3, Fall 2020 — LNC and Human Rights

AALNC

AMERICAN ASSOCIATION OF
LEGAL NURSE CONSULTANTS