The Journal of

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20th Anniversary

AALNC

AMERICAN ASSOCIATION OF LEGAL NURSE CONSULTANTS

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The Journal of Legal Nurse Consulting

Purpose

The purpose of The Journal is to promote legal nurse consulting within the medical-legal community; to provide both 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.

Manuscript Review Process

Submissions are peer-reviewed by eminent professional LNCs with diverse professional backgrounds. Manuscript assistance can be provided upon request to the editor. 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 refereed journal. Journal articles express the authors' views only and are not necessarily the official policy of AALNC or the editors of the journal. Information for authors is available from the editorial office of *The Journal of Legal Nurse Consulting*. The association reserves the right to accept, reject or alter all editorial and advertising material submitted for publication.

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The Journal of
LEGAL NURSE CONSULTING

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Features

Departments

** This article has been selected for inclusion in the 2009 JLNC Nursing Contact Hour Program. Participants of the program will be able to earn nursing contact hours for completion of an online post-test about this article. See detailed instructions at the conclusion of the article.*

New Insights and Fresh Perspectives

There is a lot to share with you this issue of the Journal. First is my hesitant farewell as your editor-in-chief. As the saying goes, "all good things must come to an end" and for me that has been my time with you, the reader. It has been a distinct honor and privilege to hold this position, and I sincerely appreciate the trust you placed in me. I step aside motivated by my desire to provide you with a new insight and fresh approach; something I feel you, the reader, deserve. The *JLNC* belongs to us all, and the privilege is rightfully passed along. The end of my journey is certainly eased by knowing that Bonnie Rogers follows me as editor-in-chief and has already demonstrated a heartfelt interest in maintaining the quality of the Journal for the readership. I also wish to welcome Marcie Valerio, who will be working with Bonnie on the Journal as the new managing editor. I know I am leaving the Journal in extremely capable hands.

A special thanks to the Editorial Board and especially to Erin Larson, managing editor, whose professionalism and dependability made each issue a reality. I have held the editor-in-chief position under two past presidents of AALNC, Ginger Varca and Mindy Cohen, who were always receptive to new ideas, as well as our current president, Suzanne Langroth, who has been especially encouraging and supportive during my term. I wish to thank each of them.

As with all issues, the authors make the Journal possible. I am both excited and humbled to bring you a unique and different perspective from outside the LNC community. I extended an invitation to several well-known, highly acclaimed individuals in the legal profession to contribute to the Journal for a PI-themed issue, and they graciously agreed to do so. Without hesitation, each generously contributed. I have been fortunate to have first-hand exposure to their knowledge and expertise in my own practice. Each brings a unique and extremely informative perspective in their article as it relates the personal injury claim. It goes without saying it would be impossible to do any of these esteemed individuals justice in truly acknowledging their skill, expertise, and talents in the brief paragraphs that follow so I will simply introduce them.

In "Social Security Landmines and How to Diffuse Them," Dorothy Clay Sims, Esq. and Elizabeth F. Stakenborg, Esq. share the attorney's perspective on the importance and impact of the Social Security application and process on the personal injury claim. Readers may recognize Sims for her many areas of accomplishment, not the least of which is her well-recognized expertise in cross-examination of the vocational rehabilitation expert. Her co-author and law practice partner, Elizabeth Stakenborg, is a highly successful attorney in her own right representing Social Security claimants.

Janabeth Fleming Taylor has an impressive background as a nationally recognized nurse-paralegal. Among her accomplishments, she was named 2002 Paralegal of the Year by AAJ (formerly ATLA) and was an invited speaker at the 60th Annual Melvin M. Belli Seminar in 2007. She has published numerous articles and has graciously contributed both the article "Tips on Requesting Medical Records" and the References and Resources section this issue, titled "Building Your Medical Library and Online Resources."

Steve Schorr, PE has contributed "The New Technology: Have You Kept Up With the State of the Art?" Admittedly less informed than I should be on the evolving technological advantages in litigation, I am truly in awe of all that Schorr's specialized expertise brings to discovery and trial. You have only to witness one trial that uses this forensic technology to be convinced it makes a positive difference in the outcome. As an LNC marketing a practice, to stay well read on these matters provides a unique and attractive niche to bring to the attorney-client.

Rose Clifford has again provided an invaluable contribution, this time on "How to Quickly Review a Personal Injury Case." Rose has been a reliable contributor with her own expertise in legal nurse consulting, and I am extremely appreciative for each of her contributions to the Journal's Q&A. Thank you, Rose.

The Clinical Maxim takes a concentrated look at the frequent presentation of fibromyalgia in the personal injury claim. Fibromyalgia — though a medically recognizable diagnosis by the AMA, NIH, and WHO — remains at the center of debate. What is undeniable is that the LNC working in personal injury representation will encounter the diagnosis and should become familiar with the diagnosis in order to fairly assess any damages. In keeping with the personal injury theme this issue, the book review

Continued on page 27

Social Security Disability Landmines and How to Diffuse Them

Dorothy Clay Sims, Esq. and Elizabeth F. Stakenborg, Esq.

KEY WORDS
Social Security, Disability, Personal Injury, Claims

When representing the personal injury client, an essential question regarding the inability to work is: "Have you applied for Social Security Disability?" From the attorney's perspective, the information contained in the plaintiff-client's Social Security Disability File (either SSDI or Supplemental Security Income) may present as a blessing or a curse as it relates to the personal injury matter. To SSA's credit, when evaluating a disability, the administration looks at the person as a whole, not just a single impairment. This means if your client has asthma but the primary reason they cannot work is because of a back injury, SSA will consider the limitations (if any) imposed by the asthma as well when deciding whether to award disability. This also means the attorney's client (claimant) has probably done an extremely thorough job of documenting any and all health problems that might further the SS claim. In the following article you will find the logic, the layout, and the necessary lessons that demonstrate the value of obtaining the Social Security file.

Get the Client's SSD Case Before It Ruins Your PI Claim

A person who is involved in a personal injury claim may have injuries which are severe enough to render him or her unemployable. If the injury is severe enough to keep the person from working for a minimum of 12 months in a row, that person should be advised to file a claim for Social Security Disability right away. It can take two years to get to a hearing from the date of the application and a possible award of benefits. Because it can take four to six years to try the personal injury claim, the benefit to the plaintiff is obvious — he not only has an income, he will also be eligible for medical benefits which can be invaluable to a plaintiff's case while it is being litigated.

Unfortunately, many lawyers litigate a personal injury without knowing the contents of a Social Security Disability claims file, only to find out at the close of evidence that the claims file contains a time bomb that will explode before they have time to disarm it. Here is where the LNC can help.

Consider an actual example. A middle-aged man sustains a brain injury due to a car wreck. He alleges there were no prior symptoms, and there are none to be found in any of the prior medical records. After the accident, he applies for Social Security Disability benefits. His personal injury lawyer never wrote for a copy of his SSD file. Just prior to the close of evidence, the defense obtained a copy of the SSD file and learned the plaintiff had claimed he was having hallucinations BEFORE the car accident and alleged brain injury. Unfortunately, he failed to admit this to his attorney and in deposition.

If the client applied for SSD before retaining the attorney in the personal injury claim, the attorney must get that file. The file may reveal the plaintiff complained of the exact same *symptoms* and same intensity both before and after a personal injury claim. The LNC and attorney need to know that before the attorney sinks valuable time and money into a non-existent case.

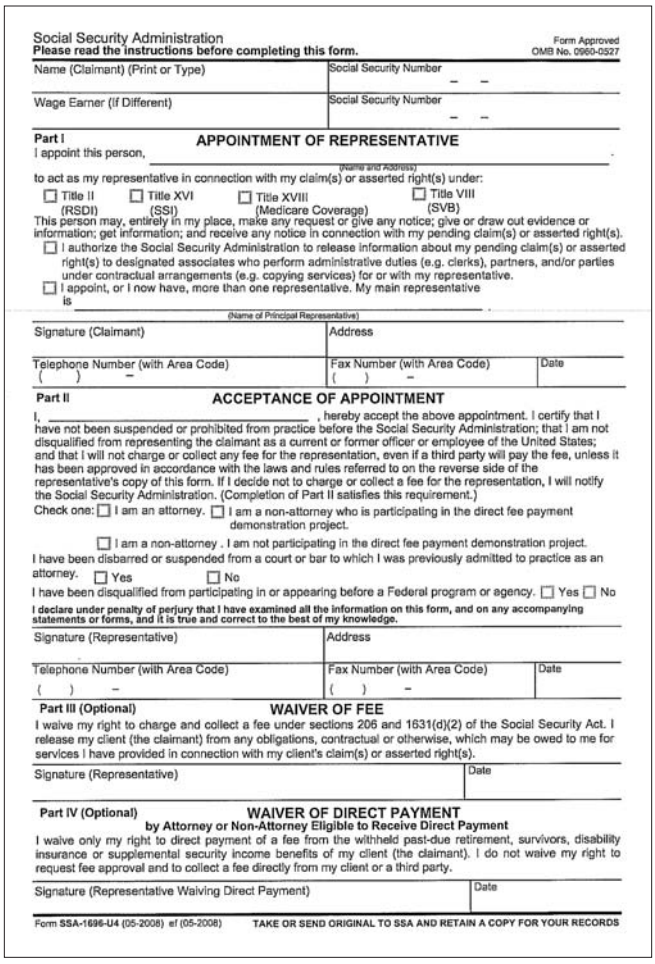
When evaluating a claim for disability, the Social Security Administration will consider the claimant's age, education, and past relevant work along with all impairments that the person may have — including impairments that may not have been caused by the accident. It is important for the attorney and LNC to know what evidence may be lurking in the social security claims file.

In order to determine what has been filed in the Social Security Disability claims process, obtain the claimant's Social Security file for review. Neither the attorney nor LNC wants to be surprised when the opposing counsel produces evidence of a pre-existing condition that they did not know about, or to find that the plaintiff had applied for disability prior to the date of the personal injury or was approved for disability as a result of impairments unrelated to the injury at issue.

To request the file, the attorney and their client should sign and file a Form 1696, Appointment of Representative (see Figure 1); and a Form 3288, Consent to Release Information. These forms can be found at **www.ssa.gov/online/ssa-1696.html** and **www.ssa.gov/online/ssa-3288.pdf**. These forms should be sent to the local Social Security Administration Office and should ask that the file be provided to the attorney. Any Social Security District Office should be able to process your request for the claims file. You may locate the Social Security District Office nearest you by logging onto the Social Security Web site at **https://s044a90.ssa.gov/apps6z/FOLO/fo001.jsp** — Local Office Search.

When the attorney and/or LNC receive the file, it will usually be in a CD format with the various exhibits listed separately. See Figure 2 for a sample exhibit list. There are several sections to the file. The sections are divided into A, B, D, E, and F sections. Section A deals with the Payment Documents/Decisions. These forms will allow you to see why the administration may have denied a claim. It will also allow

Figure 1: Page 1 of Form 1696, Appointment of Representative



Social Security Administration
Please read the instructions before completing this form.
Form Approved
OMB No. 0960-0527

Name (Claimant) (Print or Type) | Social Security Number

Wage Earner (If Different) | Social Security Number

Part I **APPOINTMENT OF REPRESENTATIVE**

I appoint this person, _____ (Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

☐ Title II (RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare Coverage) ☐ Title VIII (SVB)

This person may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

☐ I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.

☐ I appoint, or I now have, more than one representative. My main representative is _____ (Name of Principal Representative)

Signature (Claimant) | Address

Telephone Number (with Area Code) ( ) – | Fax Number (with Area Code) ( ) – | Date

Part II **ACCEPTANCE OF APPOINTMENT**

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part II satisfies this requirement.)

Check one: ☐ I am an attorney. ☐ I am a non-attorney who is participating in the direct fee payment demonstration project.

☐ I am a non-attorney . I am not participating in the direct fee payment demonstration project.

I have been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ Yes ☐ No

I have been disqualified from participating in or appearing before a Federal program or agency. ☐ Yes ☐ No

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative) | Address

Telephone Number (with Area Code) ( ) – | Fax Number (with Area Code) ( ) – | Date

Part III (Optional) **WAIVER OF FEE**

I waive my right to charge and collect a fee under sections 206 and 1631(d)(2) of the Social Security Act. I release my client (the claimant) from any obligations, contractual or otherwise, which may be owed to me for services I have provided in connection with my client's claim(s) or asserted right(s).

Signature (Representative) | Date

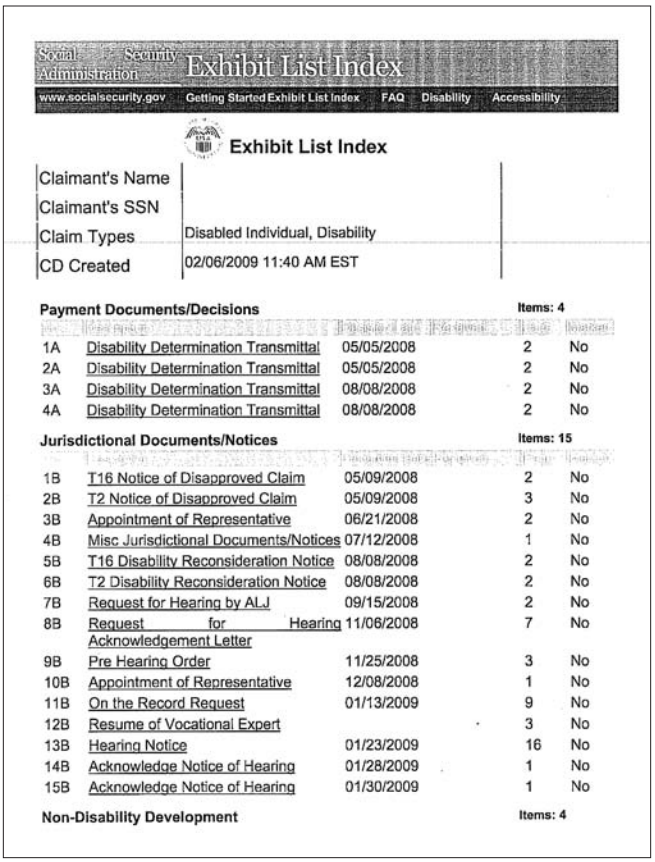
Part IV (Optional) **WAIVER OF DIRECT PAYMENT**
by Attorney or Non-Attorney Eligible to Receive Direct Payment

I waive only my right to direct payment of a fee from the withheld past-due retirement, survivors, disability insurance or supplemental security income benefits of my client (the claimant). I do not waive my right to request fee approval and to collect a fee directly from my client or a third party.

Signature (Representative Waiving Direct Payment) | Date

Form SSA-1696-U4 (05-2008) ef (05-2008) **TAKE OR SEND ORIGINAL TO SSA AND RETAIN A COPY FOR YOUR RECORDS**

Figure 2: Sections A through F of Exhibit List



Social Security Administration **Exhibit List Index**

www.socialsecurity.gov Getting Started Exhibit List Index FAQ Disability Accessibility

Exhibit List Index

Claimant's Name	
Claimant's SSN	
Claim Types	Disabled Individual, Disability
CD Created	02/06/2009 11:40 AM EST

Payment Documents/Decisions			**Items: 4**	
1A	Disability Determination Transmittal	05/05/2008	2	No
2A	Disability Determination Transmittal	05/05/2008	2	No
3A	Disability Determination Transmittal	08/08/2008	2	No
4A	Disability Determination Transmittal	08/08/2008	2	No
Jurisdictional Documents/Notices			**Items: 15**	
1B	T16 Notice of Disapproved Claim	05/09/2008	2	No
2B	T2 Notice of Disapproved Claim	05/09/2008	3	No
3B	Appointment of Representative	06/21/2008	2	No
4B	Misc Jurisdictional Documents/Notices	07/12/2008	1	No
5B	T16 Disability Reconsideration Notice	08/08/2008	2	No
6B	T2 Disability Reconsideration Notice	08/08/2008	2	No
7B	Request for Hearing by ALJ	09/15/2008	2	No
8B	Request for Hearing Acknowledgement Letter	11/06/2008	7	No
9B	Pre Hearing Order	11/25/2008	3	No
10B	Appointment of Representative	12/08/2008	1	No
11B	On the Record Request	01/13/2009	9	No
12B	Resume of Vocational Expert		3	No
13B	Hearing Notice	01/23/2009	16	No
14B	Acknowledge Notice of Hearing	01/28/2009	1	No
15B	Acknowledge Notice of Hearing	01/30/2009	1	No
Non-Disability Development			**Items: 4**	

you to see what evidence was used in making that decision. Section B deals with the Jurisdictional Documents and Notices. This section will allow you to see when an appeal or Request for Hearing was filed, the Notice of Disapproved Claim, and whether there is an attorney or representative on record. Section D is the Non-Disability Development Section. It is in this section that you will find the claimant's initial application and the reasons initially alleged as disabling. This section will also generally contain a history of the claimant's past work and earnings.

Section E is the Disability Related Development section. It is here that the LNC will find questionnaires that have been completed by both the claimant and lay third parties. There may be letters from friends and relatives in this section. Correspondence from the attorney or representative are generally placed in this section as are the various reports that have been sent to the claimant for completion. These questionnaires will ask for updates on the claimant's medical condition, what physicians the claimant has seen, whether there has been a change in condition, and updates on the claimant's medications and work history.

As the LNC, you will want to review the claimant's Disability Report and Function Reports. These forms will generally be completed by the claimant and contain information regarding the claimant's various impairments. Additionally, you will be able to determine the date of disability which is being claimed. Beware of claims that allege an onset date prior to the accident or injury — this may be an issue with regard to a personal injury claim.

Section F contains the medical records. It is here that you will find all of the medical evidence that the Social Security Administration has gathered on the claim. In addition to the claimant's treating physicians (which should be on record), there will be the consultative examiner's reports and the Mental and Physical Residual Functional Capacity Assessments completed by the Disability Determination Services physicians. It is very important to ensure that all evidence relevant to the claimant's disability has been submitted and is contained in the record. You can find important information here — including treatment records that may predate the injury you are litigating.

The Social Security Administration utilizes physicians to perform consultative examinations in order to determine the extent of a claimant's disability. The general rule regarding consultative examinations performed at the expense of the administration is that a consultative examination will be purchased if the claimant's medical source "…cannot or will not give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind."[1]

According to the administration's own regulations, the treating source is the preferred source to perform the

1D	Application for Supplemental Security Income Benefits	02/25/2008	4	No
2D	Application for Disability Insurance Benefits	03/05/2008	7	No
3D	Disco, Earning Records	11/22/2008	14	No
4D	New Hire, Quarter Wage, Unemployment Query (NDNH)	02/06/2009	2	No

Disability Related Development Items: 22

1E	Work Activity Report EE	03/05/2008	14	No
2E	Disability Report - Field Office	03/05/2008	3	No
3E	Disability Report - Adult	03/05/2008	9	No
4E	Function Report - Adult	04/02/2008	6	No
5E	Function Report - Adult	04/02/2008	6	No
6E	3rd Party Function Report - Adult	04/28/2008	8	No
7E	Function Report - Adult	05/01/2008	9	No
8E	Activities of Daily Living	05/01/2008	3	No
9E	Claimant Call-In Letter	05/05/2008	1	No
10E	Disability Report - Work History	05/05/2008	6	No
11E	Disability Report - Field Office	06/21/2008	3	No
12E	Disability Report - Appeals	06/21/2008	7	No
13E	Function Report - Adult	06/25/2008	11	No
14E	3rd Party Function Report - Adult	06/25/2008	8	No
15E	Activities of Daily Living	07/09/2008	4	No
16E	Function Report - Adult	07/11/2008	10	No
17E	Activities of Daily Living	07/11/2008	4	No
18E	Report of Contact	07/14/2008	2	No
19E	Function Report - Adult	08/12/2008	8	No
20E	Disability Report - Field Office	09/11/2008	3	No
21E	Disability Report - Appeals	09/11/2008	7	No
22E	Representative Correspondence		2	No

Medical Records Items: 11

1F	Medical Evidence of Record	Shands Hospital	03/17/2006	03/24/2006	18	No
2F	Medical Evidence of Record	The Centers Marion-Citrus Mental Health	02/14/2005	02/27/2008	35	No
3F	Medical Evidence of Record	The Centers Marion-Citrus Mental Health	03/28/2008	04/28/2008	5	No
4F	Psychiatric Review Technique	Wendy Silver, Psy.D.		04/29/2008	14	No
5F	Mental RFC Assessment	Wendy Silver, Psy.D.		04/29/2008	4	No
6F	Medical Report/General	The Center		07/28/2008	1	No
7F	Mental RFC Assessment	Theodore Weber, Psy.D.		08/08/2008	4	No
8F	Psychiatric Review Technique	Theodore Weber, Psy.D.		08/08/2008	14	No
9F	Medical Evidence of Record	The Centers Marion Citrus Mental Health	08/12/2008	08/12/2008	6	No

examination. The treating source must be, in the judgment of the administration, "… qualified, equipped and willing to perform the additional examination or tests for the fee schedule payment and generally furnishes complete and timely reports."[2]

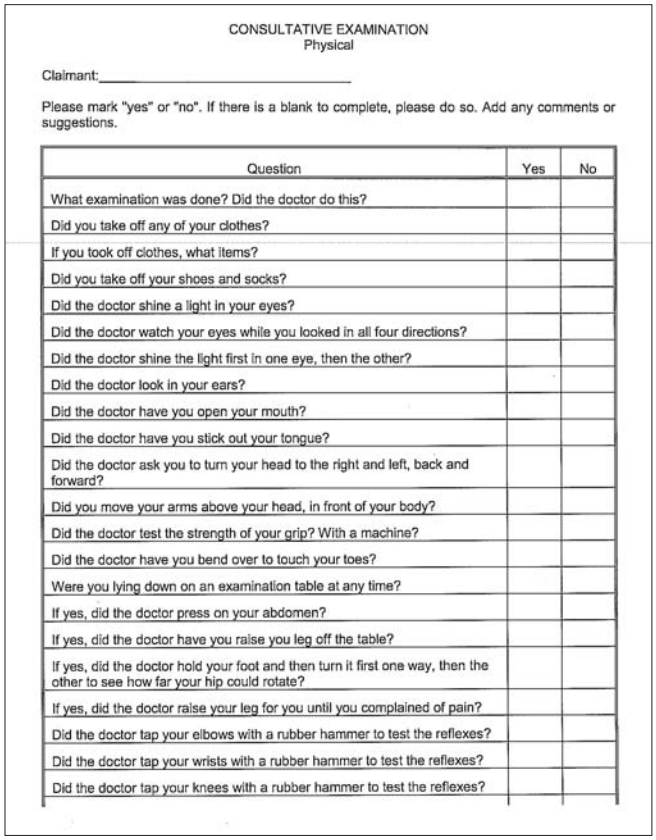
Although the administration may purchase additional diagnostic tests or procedures, it has been my experience that even a request by the administration's own examining consultants for additional testing such as an MRI is often not authorized. Alternatively, X-rays may instead be authorized but would not provide the information that was requested by the physician. Often, this will result in lengthy delays to the proceeding and force the need to file a motion to request that the administration provide the diagnostic testing recommending by their own examiners.

Additionally, many times these examinations are cursory in nature. The elements of a complete consultative examination are set out in 20 C.F.R. §404.1519n(c) and 20 C.F.R. §416.919n(c). Many times the physicians do not conduct a complete examination. Often they are not provided with the medical records prior to the examination. We have our clients take a form with them to the examination and complete it as soon as possible following the examination (see Figure 3).

The LNC may also ask the attorney's client to complete a detailed form listing their impairments and the impact that those impairments have on their everyday activities. It is a good idea to ask the client to take that to the consultative examiner as well as provide it to their treating physician(s) and their representative. If the examiner fails to consider the impact of the impairments, it can be argued that the report is incomplete or did not consider all of the impairments alleged by the claimant.

In addition to the consultative examination the claimant's file is reviewed by state agency, non-treating, non-examining physicians who completed forms called the Psychiatric Technique Form, Mental Residual Functional Capacity Assessment, and Physical Functional Capacity Assessment. Based entirely on a review of the medical evidence and the forms/questionnaires completed by your client, these state agency consultants render opinions as to the client's ability to work. These physicians are the decision makers at the application and reconsideration levels. It is important to review these assessments. Many times there are significant errors and it is quite clear that the physician could not have reviewed the medical records and come to the conclusion regarding functional capacity as described on the completed forms. It is also important to note the specialty of the individual completing the forms. Surprisingly, there have been times when the physician responsible for the opinion on functional capacity was not a specialist in the area complained of by the claimant. For instance, there have been times when a pediatrician has signed off on an orthopedic impairment RFC form or an OB/GYN signs off on a cardiac impairment.

Figure 3: Consultative Examination Form



CONSULTATIVE EXAMINATION
Physical

Claimant:_____

Please mark "yes" or "no". If there is a blank to complete, please do so. Add any comments or suggestions.

Question	Yes	No
What examination was done? Did the doctor do this?		
Did you take off any of your clothes?		
If you took off clothes, what items?		
Did you take off your shoes and socks?		
Did the doctor shine a light in your eyes?		
Did the doctor watch your eyes while you looked in all four directions?		
Did the doctor shine the light first in one eye, then the other?		
Did the doctor look in your ears?		
Did the doctor have you open your mouth?		
Did the doctor have you stick out your tongue?		
Did the doctor ask you to turn your head to the right and left, back and forward?		
Did you move your arms above your head, in front of your body?		
Did the doctor test the strength of your grip? With a machine?		
Did the doctor have you bend over to touch your toes?		
Were you lying down on an examination table at any time?		
If yes, did the doctor press on your abdomen?		
If yes, did the doctor have you raise you leg off the table?		
If yes, did the doctor hold your foot and then turn it first one way, then the other to see how far your hip could rotate?		
If yes, did the doctor raise your leg for you until you complained of pain?		
Did the doctor tap your elbows with a rubber hammer to test the reflexes?		
Did the doctor tap your wrists with a rubber hammer to test the reflexes?		
Did the doctor tap your knees with a rubber hammer to test the reflexes?		

These RFCs may be used by the administration and ultimately by the Administrative Law Judge in the Social Security Disability hearing in determining both the mental and physical capacities of your client. If these are the only opinions in the record concerning your client's functional capacities, the result can be devastating. It is extremely important to ensure that the opinions of your client's treating physician regarding functional capacities are also on record. According to the Social Security Disability guidelines, the opinions of the treating physician, as long as they are supported with the medical records and objective medical findings, carry more weight than the opinions of the state agency doctors and of the consultative examiners.

The attorney should be prepared to object to relevance and hearsay when a non-medically trained individual renders an opinion or when an individual who never saw your client or the medical records reaches conclusions. That information needs to be dealt with before the close of discovery.

As referenced above, in order to get the file, the attorney must file an Appointment of Representative (SSA-1696) signed by the client. This form can be found on the Social Security Administration Web site at **www.ssa.gov/online/ssa-1696.pdf**. The attorney or LNC should send it to the administration immediately. I would strongly suggest that you get the claimant's file before your client is deposed so your client reads through it and remembers prior complaints and is consistent in his or her testimony. Make sure your client understands very clearly, and in writing, that the attorney only represents him or her for the purposes of obtaining the file and not for litigating any matter before the SSD.

Be aware if a doctor for the Social Security Administration writes a bad report, he may have done so with no medical records, little medical history, and no clue about the actual symptoms. In fact, the report may reveal the doctor saw the claimant, when, in fact, a nurse practitioner saw the patient and the doctor never set foot in the examining room.

The office of disability determinations selects doctors who are willing to take very low reimbursements so examinations may be brief. That may mean, in some cases, you may have a report in the file that is hurtful and based on nothing more than a 10-minute chat with your client.

It is crucial to know what is in your client's Social Security Disability file. LNCs will want to work hand in hand with a Social Security Disability lawyer who is knowledgeable in these types of claims. Additionally, it is important to ensure that the treating physician agrees that your client's complaints are reasonable and supported by objective medical findings. The lawyer representing the client for SS can be in communication with the LNC and attorney and provide them with all of his or her medical records and advise you if there are problems lurking around the corner.

References

1. 20 C.F.R §404.1517 and 20 C.F.R. §416.917
2. 20 C.F.R. §404.1519h and 20 C.F.R. §416.919h

Dorothy Clay Sims, Esq. is the author of *Exposing Deceptive Defense Doctors* and limits her practice to teaching other lawyers how to cross examine doctors as well as reviewing reports for lawyers and cross examining witnesses in some cases. She is the senior partner in Sims & Stakenborg with offices in Gainesville and Ocala, Florida. She can be contacted through the firm's Web site: **www.ocalaw.com**.

Elizabeth F. Stakenborg, Esq. is a partner in the law firm of Sims & Stakenborg PA and a graduate of the University of Florida Law School. She completed her undergraduate work at the University of North Carolina–Chapel Hill. After years representing claimants as a Board Certified Workers' Compensation attorney, Stakenborg turned her focus to practice in the area of Social Security Disability. She has represented hundreds of claimants in the Ocala, Jacksonville, Daytona, Orlando, and Tampa jurisdictions. She also represents claimants in Social Security Disability claims before the Appeals Council and in the United States District Court. She is a member of the Florida Bar Association, the Marion County Bar Association, the Florida Association of Women's Lawyers, the American Association for Justice, the National Organization of Social Security Claimant's Representatives, and the National Organization of Veterans' Advocates. She is licensed to practice in the United States District Court–Middle District of Florida, the United States District Court–Northern District of Florida, and the United States Court of Appeals for Veterans Claims. She can be reached at **efs@ocalaw.com**.

New Technology: Have You Kept Up With the State of the Art?

Steven M. Schorr, PE

KEY WORDS
Technology, Forensics, Data Collections, Analysis

The personal injury claim may involve injuries sustained as a result of a motor vehicle accident, premises liability (slip and fall), or harm as a result of a dangerous or defective product, to name a few. An overlay of civil and criminal law may even emerge but whatever the precipitating event, the courts rightfully insist on accurate data collection as well as the authentic, reliable presentation of the evidence. Essential to properly litigating the personal injury claim and effectively assisting the attorney-client (whether plaintiff or defense) requires a willingness by the LNC to self-educate regarding advancing technology. This commitment does not call for a mastery in the principles of accident reconstruction or forensic animation, but it does require a desire in marketable LNCs to remain informed about the tools, terms, and technology they will likely encounter throughout case development and leading to trial. The following article provides an overview of the cutting-edge technology used in today's litigation

Introduction

The signs are out there — no more analog television signal, digital only… cell phones that have more capabilities than your year-old computer… more data storage capabilities on your thumb drive than on the hard drive of your desktop computer. These and other improvements have our society evolving technologically so quickly that it is a full-time job just to try and keep up with what is occurring, and a second full-time job to understand and utilize even a fraction of the advances that might be applicable to your particular industry. However, if you don't make the attempt to reach out into this bold new world you may wake up one morning and find that you, and your company, have fallen behind your colleagues and your competitors.

Technology affects all industries in unique ways. Accountants, actuaries, and other professionals are presented with newer and more comprehensive data management and analysis computer programs; medicine has seen DNA breakthroughs, non-invasive surgeries, smaller and more sensitive data collection devices, and more comprehensive blood tests; industry has more precise and efficient manufacturing and production processes and facilities; and engineering has seen unprecedented data collection techniques and analysis capabilities. Additionally, common to all practice areas, new technology has allowed unprecedented communication between experts and their clients. New technology has afforded the client instant access to the expert and, therefore, instant access to the data and analysis process by the use of computer-sharing, Web conferences, and video conferences. Technology has also allowed for more effective, more sophisticated yet potentially more economical demonstrative evidence.

Although many of the examples utilized for this article are based in the area of collision reconstruction (the expertise of the author), many of the applications and all of the concepts, are readily adaptable to almost any forensic discipline.

Data Collection

In order to perform his/her job to its maximum capabilities, the forensic professional should have an understanding of all data collection, analysis, and presentation tools available and applicable to his/her area of expertise. Forensic professionals (doctors, engineers, accountants, *et al.*) utilize available tools to evaluate technological/scientific/mathematical situations in an effort to accurately, ethically, and without bias, define what occurred and/or how it occurred, and sometimes this analysis can also lead to answers as to why the situation occurred. As such, the forensic professional needs to keep up-to-date with the state-of-the-art developments in their area of expertise. Since collected data is the foundation of any analysis, data collection methodology is a critical factor.

Total Station: Surveying techniques have been utilized since (before) the time of Stonehenge. As society progressed, distances, heights, and angles were measured using more sophisticated equipment. Up until the early 1990s, most survey equipment consisted of a transit (a theodolite, which is an instrument that measures vertical and horizontal angles) and a measuring rod (to measure height). In the 1990s, the basic transit and measuring rod technique was replaced by Total Station survey equipment. This state-of-the-art method for single-point data collection has its foundation in the physics-based time-of-flight technology. Total station technology is utilized by land surveyors, engineers, police personnel, and anyone else interested in accurate documentation of buildings, roadways, vehicles, machinery, and/or just about anything that one might want measured. Total station survey techniques have been, and still are, an industry standard based on sound scientific principles. When completed properly it is more accurate than hand measurements and provides the user with data that can be used to illustrate three dimensions.

Laser Scanners: The next generation of data collection equipment is the high-definition survey (HDS) laser scanner. While the total station equipment collects data points one at

a time, the time-of-flight scanners (utilizing the time and the angle of the returned reflected laser beam) or phase-based scanners (measuring the shift of laser pulse emitted from the scanner) collect millions of data points in just minutes. That is not a typographical error or an exaggeration… millions of points in minutes is a reality. The actual field time required collecting this data, and the density of the collected data points, differs with each laser scanner (there are specific scanners for specific purposes). HDS laser scanners have advanced data collection ability in a manner that, even only 10 years ago, would have been unimaginable. The quantity and quality of the point-cloud data provides accurate three-dimensional data for analysis and demonstrative uses. Using only the raw point-cloud data, buildings, vehicles, machinery, land masses, *et al.*, can be visualized and analyzed without any additional work. Close range laser scanners are utilized to create actual three-dimensional models of the human body for purposes of prosthetics, *et al.*

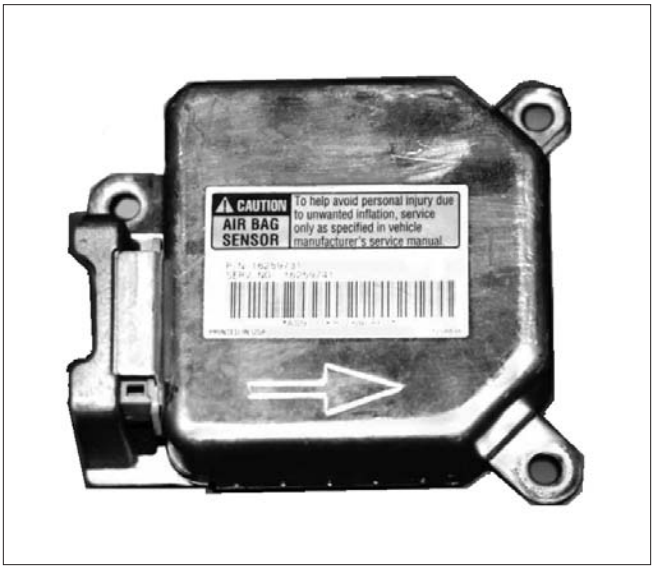
Event Data Recorders (Black Box Technology): Despite the economic troubles faced by some of the major automobile companies, each new model year does still bring new options of styling, performance, and, perhaps most importantly, new technology. From Bluetooth connectivity to real-time traffic and radar weather updates, vehicle manufacturers offer consumers new, must-have features and equipment options. These new advances also extend to collision investigation technology. That is, vehicle manufacturers are providing access to more post-crash data and vehicle parameters than ever before. The list of passenger vehicles, trucks, and buses equipped with event data recorders and supported by independent software has grown steadily in recent years. Most manufacturers provide some degree of pre-crash data that typically includes vehicle speed, engine speed, as well as brake and accelerator pedal application. Experience has shown this is often among the most sought information in collision investigation because it helps answer the question of speed and other operator actions. Although some of these parameters have been accessible from some vehicles (i.e., General Motors) for nearly a decade, more recently the list of data elements available has expanded as have the number of manufacturers allowing for independent downloading of the data.

For example, many Chrysler, Dodge, and Jeep products now provide access to vehicle parameters such as pre-event tire pressure, steering wheel position, vehicle rate-of-turn, and panic-brake assist activation. Data found in many new Ford products include transmission gear position, the factory-programmed vehicle identification number (VIN), a key-ON timer, and vehicle roll-rate. The list of data elements found in many General Motors vehicles now includes engine torque, cruise-control activation, lateral and longitudinal roll-over data, and occupant containment system activation. Other vehicles currently supported by the latest CDR (crash data retrieval) software and providing similar data coverage include certain models of Isuzu, Mitsubishi, Sterling, and Suzuki.

The ability to retrieve data from commercial vehicles (trucks and buses) has been available for a longer time than for passenger vehicles. Information about what the vehicle was doing prior to the collision can be obtained from many sources including the engine control module, the power control module, the airbag control module, the anti-lock braking system computer, on-board radar systems, and/or other computer/GPS-based systems on the vehicle. Some

Figure 1: The Leica 6000 mid-range high-definition laser scanner utilized to collect accurate, three-dimensional measurements.

Figure 2: The General Motors Airbag or Sensing and Diagnostic Module (SDM) is an Event Data Recorder (EDR) found in GM passenger vehicles.



of this data is accessible by non-manufacturer personnel. However, some of the data is still proprietary and must be collected directly by the manufacturer. For example, Detroit Diesel engines can be accessed by independent investigators, but data from Mack engines can only be retrieved by personnel directly approved by Mack.

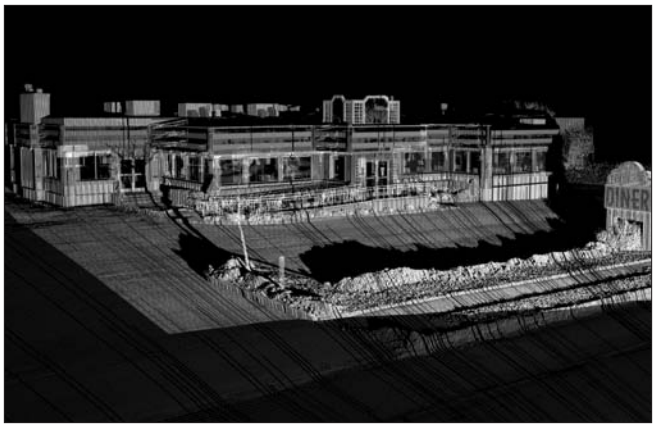
Surveillance Video: Although George Orwell passed away in 1950, decades prior to many of these noted technological developments, his novel *1984* was prescient on the topic of surveillance and of the concept of Big Brother. Today it seems that everywhere we go we are being recorded by video cameras. Surveillance cameras may be found in police cruisers, on buses, on public or private buildings (security cameras), and on utility poles (traffic cameras), among other places. Though these cameras may not have been specifically placed there to record drivers' incidents, pieces of the event may have been recorded within the focal area of the camera. Though the footage recorded may hold important evidence for use in the analysis, the video segments must still be correlated to the available physical evidence left at the time of the incident.

Technical Research: Aside from Facebook, Twitter, MySpace, and other social networking sites, the Internet is actually a significant source for basic technical research, specifications, recall data, historical data, and other important background and foundational data. Even the social networking sites have become targets for those investigating individuals. However, any data that is procured from the Internet needs to be validated as coming from a reliable source before it can be utilized. Careful and thorough research via the Internet is often both cost-effective and time-sensitive.

Analysis

Two-Dimensional and Three-Dimensional Photogrammetry: Camera matching and/or photogrammetry techniques can be utilized to recreate accurately, and to scale, data that were documented only in still or video images. For example, if a sufficient number of common points within a still photograph or image can be matched to the raw point-cloud data, the still or video image can be accurately placed within the three-dimensional environment. A photograph or image containing the location of key pieces of physical evidence (i.e., trees, the points of rest of vehicles, tire marks, *et al.*), can be utilized to accurately transfer the physical evidence to the three-dimensional environment for use in analysis and demonstrative purposes.

Figure 3: Actual point cloud data taken utilizing a High-Definition Surveying (HDS) laser scanner. Each individual point is a three-dimensional measurement.



In addition to the ability to accurately place data from still and video images into the three-dimensional environment, the camera-matching process has another advantage. The camera-matching process can overlay the actual images onto the three-dimensional environment. This process illustrates an internal calibration to the viewer by showing how the collected data points relate properly to the images of the actual scene. This adds an additional level of realism to the already accurate three-dimensional environment.

Computer-Aided Reconstruction Software: We have all heard the age-old saying "garbage in, garbage out." The saying illustrates a critical element in any use of a computer. That is, the computer is not thinking for you, the computer is performing calculations and processes that have been programmed into the hardware and/or software. The quality of the results defined by the computer is a function of the input parameters and the quality of the program. For example, in the field of collision reconstruction, computer programs are available that evaluate input parameters based on the applicable laws of physics. Many of the programs have been validated utilizing empirical (real-world) crash test data. Even so, these validated programs must be utilized within the limitations of the program, and within the limitation of the available data. Because of the speed with which they can crunch the numbers, the programs provide a valuable tool to engineers as part of the analysis process. It is always important to double-check the program results by performing manual calculations that provide a foundation for a calibration check. In the field of forensic science, it is always wise, if possible, to have a separate and independent manual analysis which can be used to help establish the validity of whatever computer analysis one may have performed.

Three-Dimensional Software Tools: The world we live in is three dimensional. However, due to limited technology and excessive costs, for the longest time we have utilized only two-dimensional images and exhibits for analysis and demonstrative purposes. Now, advances in software and the manner in which data are collected have provided engineers with the tools to create accurate, workable and affordable three-dimensional images and models. These images and models can, and are, used in every facet of the case from the analysis to the final demonstrative exhibits.

The technology required to create a three-dimensional environment is becoming more affordable and, as such, its usage is increasing. As the usage increases, the manner in which the technology is applied will become more varied and creative. For example, a properly completed basic HDS laser scan can provide a realistic and accurate three-dimensional environment without any additional work. A

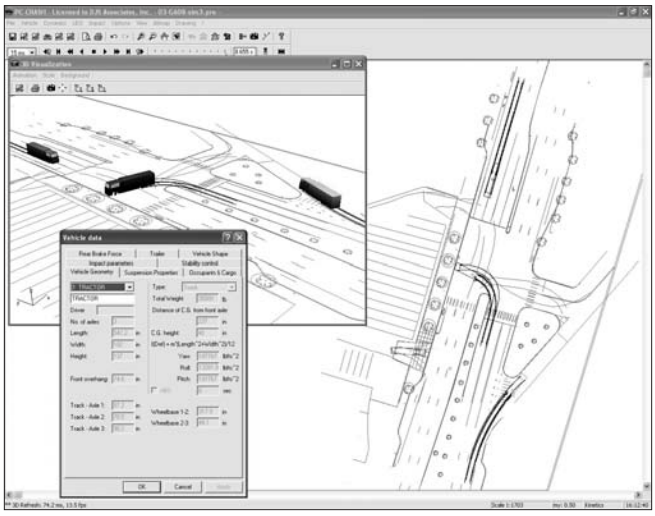
three-dimensional environment is the next best (and even sometimes a better) alternative to returning to the scene.

Spatial relationships are often critical to the proper evaluation of catastrophic events including construction accidents, vehicular collisions, slip-and-fall incidents, industrial accidents, as well as many other events. The ability to quickly and accurately replicate the incident scene into a three-dimensional environment provides the user the opportunity to evaluate a limitless number of scenarios without the constraints typically found in the actual scene recreation. For example, if there are numerous people testifying to a variety of sequences of events, each person's testimony can be easily evaluated within the accurate three-dimensional environment without the need to revisit the scene. This is especially helpful when there are pieces of machinery or vehicles that need to be positioned in a variety of locations.

One of the simplest and most direct uses of an accurate three-dimensional environment is the evaluation of sight lines available to vehicle operators and witnesses. Vehicles, their operators, and witnesses can be easily placed, accurately and to scale, within the environment to assess what these individuals could or could not see. This procedure is particularly helpful when evaluating and illustrating sight obstructions created by other vehicles, trees, buildings, *et al*. The three-dimensional environment can also be utilized to evaluate dynamic processes such as the sight obstructions resulting from moving vehicles.

Complicated manufacturing processes, cause and origin, product liability, ballistics, and construction are just a small sampling of the areas that can utilize the three-dimensional environment. Through the development of a three-dimensional environment one can take an industrial product apart, layer by layer, to illustrate to the trier-of-fact where the defect (did or did not) exist. This teaching-type of three-dimensional environment can be utilized to illustrate the timing of the events of an incident, industrial processes, *et al*.

Figure 4: When carefully applied, physics-based computer reconstruction programs can be helpful tools in an engineering analysis.



Surveillance videos (see above) often capture pieces of (and sometimes the entire) event in question. By camera matching within the three-dimensional environment, data from individual frames of a surveillance video can often be accurately placed within the three-dimensional environment and utilized as additional physical evidence for the analysis. The placement of more than one frame from the surveillance video within the three-dimensional environment often times can help define speeds, locations, and other important factors in dynamic events.

Watching recent TV dramas, one will see the usage of new technology (though many times with a bit of TV embellishing). However, aside from the drama of a TV crime show, technology is being utilized in the everyday real world. Specifically, if a crime scene is documented utilizing available three-dimensional data collection technology, the three-dimensional environment is, or can be easily created. For example, a three-dimensional environment can provide the most accurate and easily viewable analysis of the path of a bullet, or the trail of blood splatter.

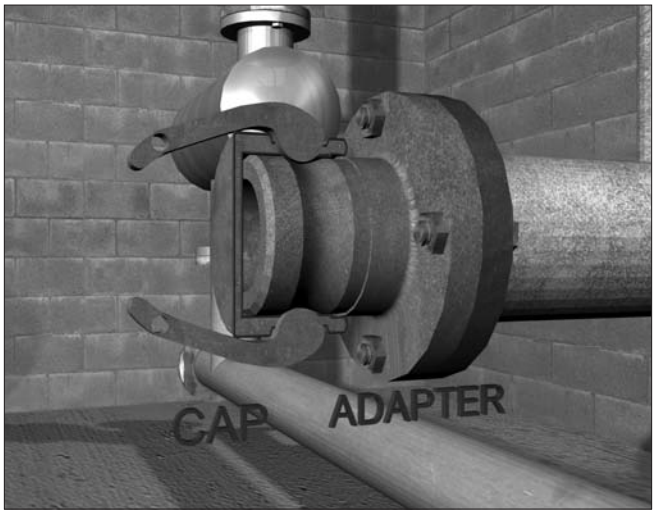
Communication Examples

Video Conferencing: By definition, video conferencing is a set of interactive telecommunication technologies that allows two or more locations to simultaneously interact via two-way video and audio transmissions. Video conferencing differs from a video phone in that it is designed for multiple participants rather than individuals. The popularity and relative inexpensive nature of high-speed Internet connectivity and video capture and display technology has led to the increase in personal video teleconference systems based on a Webcam and personal computer systems. Also, the hardware used for this technology has continued to improve in quality while the cost is continually dropping.

Video conferencing is an excellent tool when a simple telephone call or e-mail exchange is not sufficient to portray information. Video conferencing allows for a live conversation while providing access to visual content all the while eliminating the need for participants to be in the same location (thereby reducing or eliminating travel time and expenses). Acceptance and use of video conferencing is increasing; however, the perception by people that the process is too complex, too expensive, or just not ready for prime time has kept this form of media primarily in the corporate arena.

Web Conferencing: Web conferencing is a means to conduct live meetings or presentations through the Internet as opposed to having to be there in person. A Web conference allows participants to view, via their own computers, the computer of one or more other people. The computers are typically connected through either a downloaded application or a Web-based application. Web conferences allow for live, or synchronous, meetings and, in many cases, reduce or eliminate the need and expense for travel. Web conferences can be set-up in minutes, allow attendees to join a meeting in seconds, and can be recorded. Web conferencing is very inexpensive and has become a staple in allowing clients to

Figure 5: One frame from a three-dimensional demonstrative exhibit illustrating the proper placement of a cap on the end of a pipe in an industrial process. All items shown are accurate and to scale.



view immediately, and in real time, the data, analysis, or results of any project. Though Web conferencing provides the view of one another's computer, Web conferences typically do not allow for the participants to directly see the other participants.

Demonstrative Evidence: Irrespective of the area of forensic science, a key element that separates the forensic arena from the non-forensic arena is the need to present the results of an analysis to a jury or other finder-of-fact. The presentation is done in a limited amount of time and is, of course, subject to cross examination. Demonstrative evidence is often critical to allow the forensic professional to explain a potentially complex process, analysis, or theory to a lay jury. The demonstrative evidence, to be effective, should be clear, concise, visually pleasing and most important (i.e., to get it into evidence), should illustrate the *results* of the analysis rather than being an analysis tool. New technology can be a significant aid in helping produce such exhibits in a cost-effective manner. For example, if the data was collected in three dimensions, building a three-dimensional environment to illustrate the results of an analysis is straightforward and less time intensive. If computer-aided programs were utilized, still or moving images from those programs can be easily selected for use in a multi-media presentation. If a process or theory needs to be shown, computer software (utilized by the proper individual) can turn a potentially confusing situation into a powerful, clear testimonial aid. Essentially, if the data and analysis utilized new technology, it is likely that portions of that data and analysis can be easily morphed into court-accepted visual aids.

Summary

Technology moves ahead, with or without our understanding or approval. The idea is not to be intimidated by new technology, but to embrace it and utilize it to your benefit. Carefully evaluate how it can be of use to your evaluation of the case and to the trier-of-fact's understanding of the case issues. Consider the costs and benefits, and make prudent, cost-effective decisions. An understanding of how the new technology may be beneficial in clarifying the issues of your case is significant to making that proper decision.

Steven M. Schorr, PE, President of DJS Associates Inc., is a nationally recognized board-certified consultant in the areas of collision reconstruction, highway safety, and traffic engineering. He received his graduate degree in Civil Engineering from Northwestern University and his undergraduate degree in Civil Engineering from Villanova University. He has testified as an expert in local, state, and federal courts in numerous states as well as authored, lectured, and taught courses across the United States and abroad on topics related to his areas of expertise. Schorr is an active member of many peer-reviewed professional societies and is a licensed professional engineer in numerous states. Contact Steven Schorr at **experts@forensicdjs.com**.

Editor's note: *Because of the limitations of translation of detail in black-and-white reproduction, the reader is invited to view the true definition and quality of this technology at* ***www.forensicdjs.com****.*

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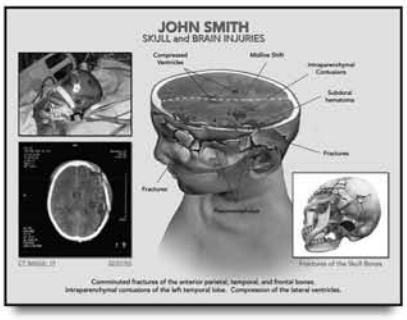

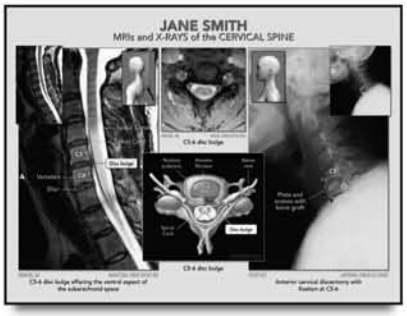

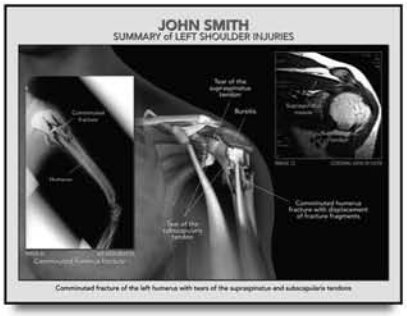

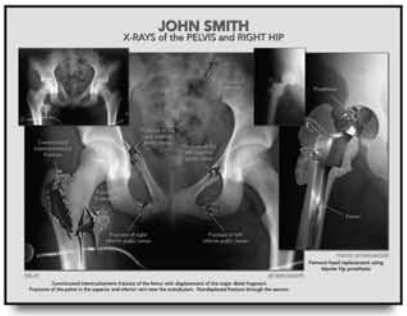

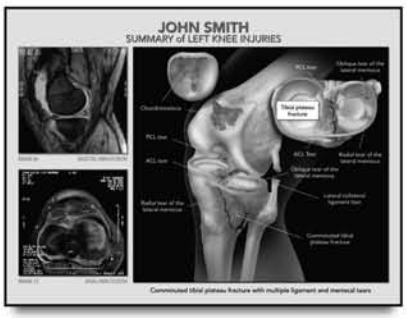

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Tips for Requesting and Reviewing Medical Records

Janabeth Fleming Taylor, RN RNC

Whether your practice involves medical malpractice, personal injury, toxic tort, or even family law you will at some point in time have the need to request medical records.

Most states have a section in the Rules of Civil Procedure covering specifics of request format, time to respond, and charges for medical billing. Be sure to check your state code prior to preparing a request for medical records.

Below are some tips for Legal Nurse Consultants who will need medical records to substantiate a claim and answer discovery through production of medical records.

- Interview the attorney's client to obtain as complete a medical history as possible. If they have billing records copy and retain those, as they will contain important contact information for healthcare providers.
- Remember billing and medical records may not be maintained at the same facility and a separate request for each is needed.
- Obtain the pharmacy billing records prior to and subsequent to the incident in question. Have the potential client bring these for the initial interview. They will contain a thumbnail sketch of the patient's medical care prior to the incident in question, identify prescribing/healthcare providers as well as document medication taken (such as pain medication) to aid in supporting damages.
- Many medical records, especially nursing documents, are multiple pages with dates and signatures only on one page. It is suggested you request multiple pages be stapled in order; this is crucial for establishing dates/times and providers in a chronological order.
- Often treatment and medication records are double-sided with initials/signatures and comments on the opposite side. Be sure to request double-sided copies, or if single-sided copies, request they be stapled together. These records may contain crucial information in a case.
- As in any case of medical negligence or malpractice, the medical records are extremely important in proving the facts showing negligence, causation, and damages.
- Obtain *all* of the nursing home, clinic, urgent care, emergency room, ambulance, visiting nurse, occupational therapy, speech therapy, physical therapy, and respiratory therapy records, and *all* doctor and hospital records.
- Sometimes urgent care, ambulatory care clinics, emergency rooms, ambulances, nursing, and various therapy services, etc., are independent contractors. Establish with the hospital or institution what care is provided by independent contractors and where to address medical records requests to ensure you are ordering *all* of the available medical records.
- Even if all of the available medical records are not part of the alleged incident and hence are not subject to the medical review, they should still be obtained as reference material.
- The records just before and after an alleged incident are especially important in providing documentation as to the person's medical condition, the extent of the alleged injuries as well as an indication of any probable long-lasting complications that may now exist.

Key Point: Information is often obtained from seemingly obscure records, hence the need for ALL of the medical records.

Components of the Medical Record

Hospital Records

Hospital records include, but are not limited to:

- *Admission Information/Summary* — documents date/time of admission, admitting diagnosis, admitting physician, and other basic admission information.
- *Discharge Summary* — documents condition at time of discharge, any post-discharge instructions for lab tests, physician appointments, and medications prescribed, as well as instructions for physical activity, and other treatment modalities.
- *Admission History and Physical* — documents condition at time of admission, usually performed by admitting physician, but sometimes deferred to a medical resident or physician assistant. There may also be a separate document, "Physician's Admission History and Physical" in some healthcare facilities.
- *Physician's Progress Notes* — daily chronology of patient's progress, often gives rationale behind change in treatment or medication and documents physician visits.
- *Emergency Room Records* — documents condition upon arrival, chief medical complaint, and may also include emergency room physician evaluation of any tests performed such as ultrasound, radiology, and laboratory tests. Also recommendations for referral, admission and/or discharge are obtained here.
- *Consultation Reports (Physician and other professional)* — documents evaluation and recommended treatment by physicians, and other healthcare providers asked to consult in reference to patient care.

- *Physician's Orders* — documents date and time of treatments and medications ordered by treating physicians. These are to be signed by the physician ordering, even if a telephone order or phone/verbal order given to a nurse.
- *Operating Room Records and Report (Physician, Nursing and Anesthesia Record)* — documents procedure performed, surgeons, nurses, and anesthesia personnel present during surgery. Also documents patient condition before, during, and after surgery. Some hospitals document post operative care in the "PAR" (post-anesthesia recovery) record.
- *Laboratory Reports* — documents results of tests performed in the laboratory. Includes not only blood and urine tests, but also cultures of tissue and microscopic exam of tissue.
- *Graph Sheets* — documents basic vital signs and other basic functions such as urinary and intestinal elimination. Some graphic sheets also document dietary and fluid intake.
- *I and O record* — documents fluid and solid intake and output on a daily basis. Usually tallied on a daily basis, but may be recorded with each shift (two to three times a day).
- *Treatment Sheets* — documents all manner of treatments such as wound care, hot and cold therapy not given in physical therapy, etc.
- *Medication Sheets* — documents medications given. PRN medication is given on an as-needed basis and may be listed separately from regularly scheduled medications.
- *X-ray/Radiologist Reports* — documents radiologist's impression of radiology tests. Will also contain name of ordering physician.
- *Physical Therapy Records* — documents treatments/therapy given in the physical therapy department as well as the patients response to therapy.
- *Speech Therapy Records* — documents therapy given by speech pathologist.
- *Occupational Therapy Records* — documents therapy given by occupational therapist. May be included as part of physical therapy records in some institutions.
- *Nurse's Notes/Nursing Progress Notes* — Chronological documentation of patient's condition, physician visits, change in condition and treatments given as well as patient responses. Usually written in longhand, but more and more frequently are seen as a computerized record.
- *Nursing Care Plans* — Each patient has a general plan of care, and the foundation is determined by the policy of the healthcare facility. However, generally the nursing care plan covers all treatments, medications, and therapies ordered for the patient. Goals are also stated for patient care.

- *Interdisciplinary/Multidisciplinary Progress Notes (not utilized in all facilities)* — documents progress of each therapeutic department in chronological order, rather than a separate progress note maintained by each department. May include notes made by more than one department, such as speech, physical, and occupational therapies.

Other records found but not consistently maintained by all facilities may include records or treatment logs such as:

- Treatment records, nursing treatment records (sometimes in with the medication records; sometimes listed separately)
- Physical therapy
- Speech therapy
- Occupational therapy
- Rehabilitation therapy, restorative services
- Recreational therapy, activity therapy or service
- Any other form of therapy records
- Visiting nursing or home-care nursing records
- Records from independent medical laboratories
- Records from independent radiology and nuclear medicine services

Emergency Service Records

- *Ambulance Records (EMS, or emergency medical service)* — these records may be maintained by either an independent EMS service or a municipal fire department, or hospital EMS service.
- *Emergency Room Records* — these are often not part of the hospital records, where the emergency room is operated by an independent contractor.

In some situations, the records of emergency response personnel such as the local police and rescue portions of the fire department will also apply and will be separate from other EMS records, and a separate request for each entity will be required in order to obtain all records. For instance, in Delaware the Flight for Life helicopter is maintained and run by the state. The transport record for this information is obtained through the State Trooper headquarters in Dover, Delaware.

Whether a seasoned LNC or novice, knowing what's missing is just as important as knowing what was produced.

Janabeth Fleming Taylor, RN RNC, has a degree in Nursing from Oklahoma State University and Litigation Paralegal Certificate from the University of Oklahoma Law Center. She was a nursing instructor for 10 years and has been a medical legal consultant since 1990. Taylor is currently president/owner of Attorney's Medical Services Inc. in Corpus Christi, Texas.

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Building Your Medical Library and Online References

Janabeth Fleming Taylor, RN RNC

Whether your practice involves a client injury in the workplace, injury due to medical negligence, product defect, or toxic chemicals you will have a need to obtain and review medical records.

At times the terms used in the medical records can be confusing and the rationale for diagnosis and treatment is not clear. In other instances you wish to review a standard of care as it relates to the client's diagnosis and treatment.

We are all sensitive to the issue of expense for purchasing books. Therefore, you may want to consider obtaining some of these books as library materials for a shared legal medical library established through networking with other LNCs or AALNC chapters. The information provided here reflects purchasing information and prices at the time of this writing. Many of these resources are available in an online format as well. The reader is invited to visit the publisher's Web site for further information. Below is a general listing of resources, both in text print as well as online which might be of benefit to your practice.

Medical Abbreviations: 30,000 Conveniences at the Expense of Communications and Safety
by Neil M. Davis
Annual pocket quick-reference guide to 30,000 meanings of medical abbreviations and 3,400 cross-referenced generic and brand drug names. Thumb-tabbed pages. Includes single-user access code to the Internet version of the book which is updated with 80–120 new entries per month.
Publisher: Neil M. Davis Assoc.; 14th edition (2008)
www.neilmdavis.com

Laboratory and Diagnostic Tests with Nursing Implications (6th Edition)
by Joyce Lefever Kee, RN MSN
Each test is discussed in seven subsections in the following sequence: 1) reference values/normal findings, 2) description, 3) purpose, 4) clinical problems, 5) procedure, 6) factors affecting laboratory or diagnostic results, and 7) nursing implications with rationale. Following the name and initials for each test, there may be names of other closely associated tests. Reference values/normal findings are given for children and adults, including the elderly. The description focuses on background data and pertinent information related to the test. The general purpose for each test is listed. Clinical problems include disease entities, drugs, and foods that cause or are associated with abnormal test results. The procedure is explained with a rationale for the test and with appropriate steps that the nurse and other health professionals can follow. Factors affecting laboratory or diagnostic results alert the nurse to factors that could cause an abnormal test result. The last subsection and most valuable information for each test concerns the nursing implications with rationale. For most diagnostic tests, nursing implications are given as pretest and posttest.
Publisher: Prentice Hall; 7th edition (2009)
www.textbooks.com/ISBN/9780135074053/Kee/Lab-and-Diag-Test-With-Nursing-Implications_-_0135074053.php?CSID=QK20C2Q0QDA0Q2MCMDUD2UMCO

Alexander's Care of the Patient in Surgery
by Jane C. Rothrock, RN DNSC DN0R FAAN (editor), Dale A. Smith, RN CNOR RNFA (editor), Donna R. McEwen, RN BSN CNOR CRST (editor)
Alexander's Care of the Patient in Surgery, considered the standard in perioperative care for more than 50 years, is a comprehensive reference for students and practitioners alike. Unit I covers basic principles and patient care requisites. Unit II details step-by-step procedures for more than 400 general and specialty surgical interventions. The unique needs of ambulatory, pediatric, geriatric, and trauma surgery patients are discussed in Unit III. New features include highlighted patient education and discharge planning, sample critical pathways, expanded coverage of endoscopic/minimally invasive procedures, and Internet resources. A new chapter, Surgical Modalities, addresses today's technologically advanced perioperative environment.
Publisher: Mosby-Year Book; 13th edition (2007)
www.elsevier.com/wps/find/bookdescription.cws_home/709527/description#description

Merck Manual Diagnosis and Therapy
by Mark H. Beers (editor-in-chief), Robert S. Porter (editor), Thomas V. Jones (associate editor), Justin L. Kaplan (senior assistant editor), Michael Berkwits (associate editor)
The most widely used medical text in the world and the hypochondriac's bible, the *Merck* has the lowdown on the vast expanse of human diseases, disorders, and injuries, as well as their symptoms and recommended therapy. It's intended for physicians and medical students, but though the type is tiny and the language technical, the *Merck* is a valuable volume for anyone with more than a passing interest in bodily ills.
Publisher: Merck & Co; 18th edition (2006)
www.merck.com/mmpe/index.html

Rosen's Emergency Medicine: Concepts and Clinical Practice
by John Marx, MD, Robert Hockberger, MD, Ron Walls, MD
The three-volume *Rosen's Emergency Medicine* continues to be the premier source that defines the field of emergency medicine. It describes the science of emergency medicine and its application, focusing on the diagnosis and management of problems encountered in the emergency department. This stellar new team of editors has introduced many new features including a "Cardinal Presentations" section, chapter consistency, and more diagnostic imaging throughout. All existing chapters have been extensively revised, and reference lists have been edited to include more significant, up-to-date references.
Publisher: Mosby-Year Book; 7th edition (2006)
www.elsevier.com/wps/find/bookdescription.cws_home/719059/description#description

Joint Commission on Accreditation of Healthcare Organizations
Comprehensive Accreditation Manual for Hospitals: The Official Handbook (CAMH) provides accreditation policies, standards, scoring, aggregations rules, and decision rules.
Publisher: Joint Commission on Accreditation of Healthcare Organizations, Oakbrook Terrace, Ill.
www.jointcommission.org

Cecil Textbook of Medicine
by Russell L. Cecil (editor), J. Claude Bennett (editor), Lee Goldman (editor)
Cecil Textbook of Medicine, 23rd edition CD-ROM provides rapid-access to the complete text, illustrations, tables and references. Review questions with answers are linked to the relevent sections of the textbook and complete drug monographs from *Mosby's GenRx* are included. Plus, this CD-ROM gives you free access to Cecil Online. (This text refers to the CD-ROM edition.)
Publisher: W.B. Saunders; (2008)
www.cecilmedicine.com

Current Pediatric Diagnosis and Treatment
by William W. Hay Jr., MD (editor), Anthony R. Hayward, MD (editor), Myron J. Levin, MD (editor), Judith M. Sondheimer, MD (editor)
Provides clinical information on ambulatory and inpatient medical care of children from birth through adolescence, focusing on clinical aspects of pediatric care and their underlying principles. Emphasis is on ambulatory care, acute critical care, and a practical approach to pediatric disorders. This edition contains new chapters on developmental disorders and behavioral problems, substance abuse, allergic disorders, and fluid, electrolyte, and acid-base disorders and therapy, plus expanded illustrations.
Publisher: Appleton & Lange; 19th edition (2008)
newbooks.eppg.com/product.php?isbn=0071377263

Clinical Nursing Skills and Techniques
by Anne Griffin Perry, Patricia A. Potter
The 7th edition of *Clinical Nursing Skills and Techniques* offers new up-to-date content and improved features, in addition to complete coverage of more than 200 nursing skills, a nursing process framework for a logical and consistent presentation, and a convenient two-column format with rationales for each skill step.
Publisher: Mosby Inc.; 7th edition (2009)
www.elsevier.com/wps/find/bookdescription.cws_home/717321/description#description

General Reference Internet Links

Medscape
www.medscape.com
Medscape is a multi-specialty Web service for clinicians and consumers that combines information from journals, medical news providers, medical education programs, and materials created for Medscape. Here you will find a combination of peer-reviewed publications, a free version of drug information via the "First Data Bank File" and free MEDLINE.

MD Consult
www.mdconsult.com
Founded by leading medical publishers that include Mosby and W.B. Saunders, MD Consult integrates peer-reviewed resources from more than 50 publishers, medical societies, and government agencies. From this site you can obtain full text from respected medical reference books from a variety of specialties, medical journals, and MEDLINE. In addition, you can obtain comprehensive USP drug information (beyond the scope of a PDR), as well as more than 600 clinical practice guidelines. This is not a free service, but for a small fee you can have access by the day, month, or year. Also there is a free seven-day trial membership.

Guidelines Clearing House
www.guidelines.gov
This site is a public resource for evidence-based clinical practice guidelines. NGC is sponsored by the Agency for Healthcare Research and Quality (formerly the Agency for Health Care Policy and Research) in partnership with the American Medical Association and the American Association of Health Plans. A medical term search will retrieve objective, detailed information on clinical practice guidelines. Results in a search will obtain: structured abstracts (summaries) about the guideline and its development, a utility for comparing attributes of two or more guidelines in a side-by-side comparison, syntheses of guidelines covering

similar topics, highlighting areas of similarity and difference, links to full-text guidelines, where available, and/or ordering information for print copies and annotated bibliographies on guideline development methodology, implementation, and use.

CPT Codes
www.ama-assn.org
From the CPT link on the American Medical Association's Web site you can click on related links to view numerous CPT codes. Also, you can order the CPT coding handbooks in paperback format. The codes are updated annually.

Additional Internet Resources

Anatomy
www.anatomy.org

Anesthesiology
www.asahq.org

Cardiology
www.acc.org
www.asecho.org
www.americanheart.org

Chiropractic
www.acatoday.org
www.nysca.com

Emergency Services
www.aaem.org
www.abem.org
www.acep.org

Endocrinology
www.aace.com
www.women-in-endo.org
www.diabetes.org

Gastroenterology/Liver
www.acg.gi.org
www.gastro.org
www.asge.org

Gastroenterology/Liver (continued)
www.sgna.org
www.liverfoundation.org

General Medicine
www.aafp.org
www.abms.org
www.ama-assn.org
www.aamc.org
www.msweb.net/aaps/

Hematology
www.hematology.org

Immunology
www.ashi-hla.org
www.aaaai.org

Infectious Disease
www.idac.org/
(choose physician links)
www.cdc.gov/ncidod/
id_links.htm
www.amm.co.uk/

Internal Medicine
www.acponline.org
www.abim.org
www.sgim.org

Obstetrics/Gynecology
www.acog.org
www.abog.org

Midwifery
www.acnm.org

Neurology
www.stroke.org
www.aan.com
www.neuroguide.com/

Oncology
www.asco.org
www.cancer.gov
www.oncolink.upenn.edu
www.cancer.org

Ophthamology
www.eyenet.org
www.ascrs.org
www.asoprs.org

Optometry
www.aaopt.org
www.aoanet.org

Orthopaedics
www.aaos.org
www.sportsmed.org

Pediatrics
www.aap.org

Pharmacy
www.aphanet.org

Physical Therapy
www.aaptnet.org
www.apta.org
www.nationalrehab.org

Physiology
www.faseb.org/aps/

Plastic Surgery
www.aafprs.org
www.plasticsurgery.org

Podiatry
www.apma.org
www.footandankle.com/
podmed/

Preventive Medicine
www.acpm.org

Psychiatry
www.abpn.com

Pulmonology
www.lungusa.org
www.aarc.org
www.chestnet.org/
www.thoracic.org

Radiology
www.asrt.org
www.rsna.org
www.acr.org

Rheumatology
www.rheumatology.org
www.arthritis.org

Surgery
www.facs.org
www.acfas.org
(foot and ankle)
www.fascrs.org
(colon and rectal surgeons)
www.womensurgeons.org

Urology
www.auanet.org
www.kidney.org

Vascular Medicine
www.svmb.org

Veterinary Medicine
www.abvp.com
www.avma.org

Medical Terminology
www.nlm.nih.
gov/medlineplus/
mplusdictionary.html
medmatrix.org
www.medicinenet.com
(then click on dictionary)

The preceding sites provide online resources for research and education for the LNC. This list is not meant to be all inclusive of the potential resources available; it is provided as a general reference source for the LNC and is not an endorsement of any listed sites or services. As with any online resource, the reader must confirm its authority and credibility independently.

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Fibromyalgia

Kara DiCecco, MSN RN LNCC

As a rule, medical skeptics outright reject what can't be objectively quantified to their satisfaction no matter what the patient experiences. A measurable test must exist to validate the phenomenon's existence; the fact that it does occur is not enough. Once progress is made and a measurement is found the inevitable occurs; medical disbelievers move the official diagnostic bar to a higher position for a more restrictive measurement. For a profession that overwhelmingly functions on the premise of the "rule out diagnosis" it seems ironic that the patient's report is so quickly discounted. Enter Fibromyalgia, the poster disease for cynical healthcare providers. To address this cynicism you need only realize that the World Health Organization, the CDC, the NIH, and the American Medical Association have all acknowledged fibromyalgia as a true illness (Gilliland, 2009). The diagnosis of fibromyalgia may be encountered as a result of the injuries sustained in a personal injury case.

Pathophysiology

This was first described by William Balfour, a surgeon at the University of Edinburgh, in 1816 and recognized by the AMA in 1987. Theories abound for the exact cause of fibromyalgia syndrome (FMS) but the precipitating mechanism and etiology remains a mystery. Alteration in sleep patterns and neuroendocrine transmitters (such as serotonin, substance P, growth hormone, and cortisol) have advanced research regarding both autonomic and neuroendocrine dysregulation in fibromyalgia patients. The syndrome is characterized by widespread, chronic pain; sleep disturbances; and extreme exhaustion.

Etiology/Pattern

Suspected or precipitating causes/Theories/Research:

- Genetic predisposition (Gilliland, 2009).
- Immunoregulatory abnormalities (for example, alteration in Interleukin-1).
- CNS involvement (dysregulation of dopaminergic neurotransmitters) (Gilliland, 2009).
- Autonomic and neuroendocrine dysregulation (secondary to alterations in: serotonin [low levels], substance P, the neuropeptide found in spinal fluid and responsible for heightened pain sensitivity. [elevated levels], growth hormone [elevated levels] (Millea & Holloway, 2000).
- Abnormal response to stress (such as physical trauma, infection) via the prolonged production and release of stress-response chemicals (Hypothalamic-Pituitary-Adrenal Axis dysfunction with low cortisol levels) (Millea & Holloway, 2000).
- Central sensitization/abnormal central processing of nociceptive pain input.

Signs and Symptoms

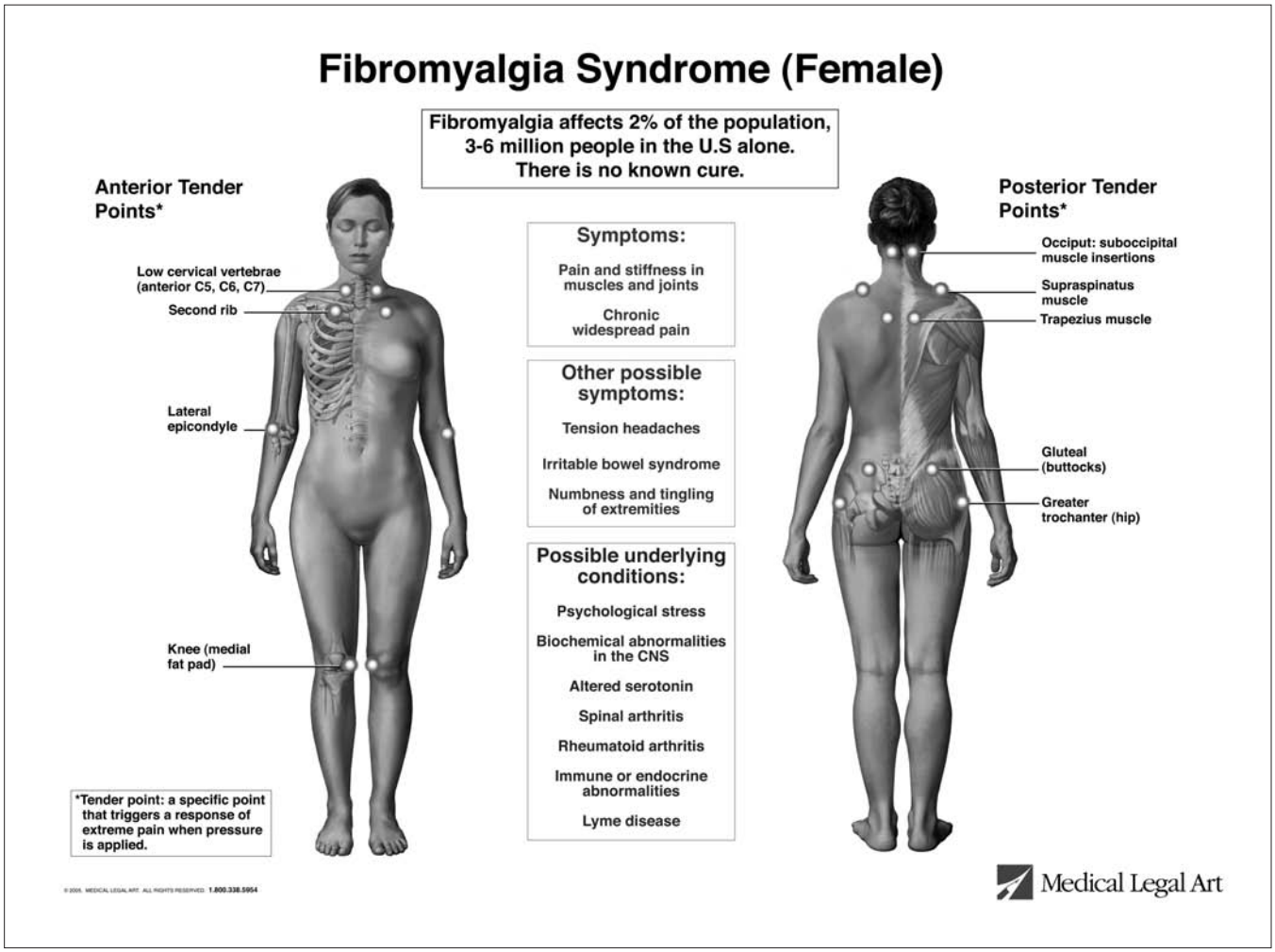
- Widespread, chronic pain as defined by pain in both sides of the body; pain above and below the waist. In addition, axial skeletal pain (cervical spine, anterior chest, thoracic spine, or low back pain) must be present. Low back pain is considered lower segment pain (Gilliland, 2009; Millea & Holloway, 2000).
- Widespread pain, poor sleep, and severe fatigue have been reported as the classic defining symptoms.
- Fibro "fog" (mental cloudiness/cognitive dysfunction).
- Co-morbidities, such as headache, irritable bowel syndrome, restless leg syndrome, hypoglycemia, Sjögren's Syndrome, and depression from chronic pain may present.
- Tissues of extremities may feel swollen, numb, and tingling. Upper extremities more often affected (Gilliland, 2009).
- Intensity of pain may wax and wane (but is constant), and tender points may migrate.
- Those affected may describe it as a chronic flu-like sensation.

Diagnostic Criteria/Testing

Determining or confirming the cause of fibromyalgia, may warrant limiting or expanding individual testing based on specific clinical presentation.

- According the American College of Rheumatology's (ACR) 1990 defining criteria:
- Eleven out of 18 possible tender points (all four quadrants of the body) over at least three consecutive months (Gilliland, 2009).
- Longitudinal documentation (three months or greater) of tender point exam per ACR 1990 criteria using Dolimeter (device used to exert controlled pressure). 4.4 kg (9 lbs.) of pressure is used in diagnosing tender points (Millea & Holloway, 2000).
- Sleep study to evaluated Stage 3-4 (non-REM) cycles as common reports of frequent awaking and "non-refreshing sleep" are a common manifestation. Diagnosed as Alpha-Delta sleep anomaly, intrusive Alpha waves interrupt Delta (deep sleep) (Gilliland, 2009).
- Labs drawn (CBC, TFTs, Sed Rate) to rule out alternate disease process which presents similar to fibromyalgia.

Figure 1



Legal Considerations

- Nomenclature is still an issue with fibromyalgia. There is confusion between the interchange of terms "tender points" and "trigger points." Trigger points and tender points have distinct features. Trigger points (TrP) are taut muscle bands that may be treated by injecting anesthetic into the affected muscle. They can trigger spasm in adjacent muscles or radiate to other areas served by the same nerves. Tender points are diagnosed by location and pressure but do not present as taut muscle bands. Their characteristic is intense pain when pressed.
- Myositis, myalgia, myofascial pain syndrome, fibrositis, and pressure point syndrome may be incorrectly used as pseudonyms for fibromyalgia.
- The lack of reliability of generally accepted objective testing makes establishing the diagnosis a core issue in litigation and emphasizing the need to research the court's holdings on the acceptance of differential diagnosis. According to Gilliland, for the average patient it takes five years and an estimated 15 physicians to make the final diagnosis of fibromyalgia (2009).
- Frederick Wolfe, MD, one of the physicians originally defining the 1990 ACR diagnostic criteria for fibromyalgia, has since reversed his opinion about the condition and now discounts it as a disease process.
- A complete physical exam is needed to identify all co-morbid conditions.
- Alternate causation: conditions such as hypothyroid, systemic lupus erythematosus, rheumatoid arthritis, Lyme disease, osteoarthritis, and chronic fatigue syndrome (CFS) may mimic fibromyalgia presentation.
- The gender prevalence of women to men (9:1). The disorder disproportionately affects women. The latter is true as well of lupus, rheumatoid arthritis, and osteoporosis.
- Medications *may* need to be prescribed at one-half to one-quarter the lowest dose due to poor tolerance or hypersensitivity to medications in the fibromyalgia

patient. Treatment is symptomatic and may include muscle relaxants, low dose tricyclic antidepressants, non-steroidals, sedatives, and possible trigger point injections (if trigger points also present) (Goldenberg, Burckhardt & Crofford, 2004).

- June 2007, Lyrica (Pregabalin) gained FDA approval for the treatment of fibromyalgia.
- Growth hormone necessary for tissue and muscle repair is released during REM sleep. Fibromyalgia patients often experience interrupted REM sleep cycles.
- Serotonin, a neurotransmitter, is regulated in Delta-sleep. Serotonin affects sleep, mood, and sensory perception.

A Look at Case Law and Resources

An informal search of online case law was conducted using the Google search engine and keywords (in quotes) "fibromyalgia," "tender points," "medical malpractice," "testing," "AMA," "ACR," "differential diagnosis," and "case law" in alternating string searches. A review of the information retrieved provided both formal and informal sources. The majority of case law was found in Social Security and Worker's Compensation litigation. While "diagnosis of exclusion" is the frequent classification, especially important to the adjudication of these cases are the previously holdings of the Courts on differential diagnosis. A sampling of the *preliminary results* via Internet retrieval is provided here.

Carter v. Gulf Coast Medical Center, 2004 MS Wrk. Comp. LEXIS 77.
WC: Work-related motor vehicle accident. Fibromyalgia not rated in the 5th Ed. AMA Guides to Permanent Impairment. Claimant found totally and permanently disabled based on physician's testimony.

Heair v. Premier Linen & Drycleaning, Inc., 2007 IA Wrk. Comp. LEXIS 333.
WC: Fibromyalgia work-related injury.

Powell v. Charter, 959 F. supp. 1238 (C.D. Cal. 1997)
SSA: Diagnosis of chronic fatigue syndrome and fibromyalgia often confused but not mutually exclusive.

Rose v. Shalala, 34 F.3d 13 (1st Cir. 1994)
SSA: Diagnosis of exclusion (CFS) may lead to extensive but not necessarily invalid medical treatment.

heartspring.net/fibromyalgia_resources.html
Portal of fibromyalgia resources.

www.nfra.net/fibromyalgia_glossary.htm
A glossary of terms associated with rheumatological disorders.

www.burnhambrown.com/index.cfm?fuseaction=content.contentDetail&id=8728
Condensed article originally published in the ABA newsletter *TortSource*: A publication of the Tort & Trial Insurance Practice Session. Provides several examples of rulings on the admissibility of the differential diagnosis.

caselaw.lp.findlaw.com/data2/circs/6th/085924p.pdf
Opinion of the US Court of Appeals in *Best v. Lowe's Home Centers, Inc.* on the issue of differential diagnosis.

Potential Experts

- Internal medicine or family practice as treating primary physician to provide longitudinal record of symptoms.
- Rheumatologist
- Physical therapist and/or muscle physiologist
- Pain management specialist

Damages

- Depending on individual presentation and severity, economic damage due to loss of potential career/educational advancement and/or chronic disability due to inability to work.
- Sequelae of misdiagnosis, impact on psychological and psychosocial factors (such as depression, anxiety, social withdrawal), and possibly unnecessary surgery.
- Chronic pain.

References

Fibromyalgia. Mayo Clinic Staff. Retrieved May 6, 2009 from www.mayoclinic.com/print/fibromyalgia/DS00079/METHOD=print&DSECTION=all

Fibromyalgia — An NIH Perspective: Interview with Steven Katz, M.D., PH.D. (2002) Retrieved May 5, 2009 from www.prohealth.com/library/showarticle.cfm?id=3914&t=CFIDS_FM

Gilliland, R. P. (2009) Fibromyalgia. eMedicine. Retrived May 6, 2009 from emedicine.medscape.com/article/312778-overview

Goldenberg, D. L., Burckhardt, C. & Crofford, L. (2004). Management of Fibromyalgia Syndrome. *JAMA*. Retrieved May 6, 2009 from jama.ama-assn.org/cgi/content/full/292/19/2388

MedlinePlus: Fibromyalgia (2008). Retrieved May 6, 2009 from www.nlm.nih.gov/medlineplus/fibromyalgia.html

Millea, P. J. & Holloway, R. L. (2000). Treating Fibromyalgia. *American Family Physician*. Retrieved May 6, 2009 from www.aafp.org/afp/20001001/1575.html

Stanford University Medical Center (2008). An update on Fibromyalgia. Retrieved May 5, 2009 from www.researchchannel.org/prog/displayevent.aspx?rID=28078&fID=813

The topic matter offered in "The Clinical Maxim" is not meant to provide medical or legal advice, only to acquaint the reader with an overview of clinical conditions and/or diseases as well as their clinical/legal implications. As with any medical-legal matter, the reader is admonished to consult the services of a medical and/or legal professional, respectively. The reader is also reminded to critically analyze and evaluate the sources offered here and confirm their reliability independently.

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2009 JLNC Nursing Contact Hour Program

This article has been selected for inclusion in the 2009 JLNC Nursing Contact Hour Program. To register (new participants): Visit **www.aalnc.org/edupro/journal/CNE/2009.cfm** to purchase access to the 2009 JLNC Nursing Contact Hour Program.

Current participants: Login to the AALNC Web site with your member ID and password to access the 2009 JLNC Nursing Contact Hour Program Online Portal. Once logged in, click on the link to the Online Portal within the left-menu navigation options. You will then be required to complete a 5-10 question post-test about the information presented in this article. A passing score of 70% is necessary. After successfully completing the post-test, you will be able to print your certificate of completion, indicating contact nursing hours earned. AALNC is an approved provider of continuing nursing education by the Illinois Nurses Association, an accredited approver, by the American Nurses Credentialing Center's (ANCC's) Commission on Accreditation.

This activity is eligible for nursing contact hours. Nursing contact hours offered through an ANCC accredited provider are recognized by the majority of state licensing boards and nursing certification boards.

How to Quickly Review a Personal Injury Case

Rose Clifford, RN LNCC

Q: My attorney has given me a huge amount of medical records in one of their personal injury cases. They say it is not a serious personal injury so do not spend a lot of time on it. The attorney wants to know who his client has seen, what injuries they suffered, what tests were done, what treatments they received, and if they are missing any medical records. How can I do this in a cost-effective manner?

A: Quickly review the medical bills first, before reviewing the medical records. Once you have reviewed the medical bills, you will know which medical records are most salient to your attorney's case.

Legal nurse consultants have long been caught between their responsibility of performing a time-consuming comprehensive review of the medical records and being constrained by attorneys who conscientiously limit their case costs in what they classify as non-serious personal injury cases. These kinds of cases most often involve minor motor vehicle accidents at low speeds which may result in an acceleration-deceleration injuries, neck pain, or low back pain. They result in minor strains and sprains.

Here are some tips on how to meet your need to be detail-oriented in your review and yet reasonably limit the cost to your attorney.

How to Review Personal Injury Records

Personal injury records can be quite voluminous even in your everyday fender-bender type of motor vehicle accidents. Clients tend to have an inordinate amount of pre-existing medical records followed by the personal injury motor vehicle collision or minor slip and fall. The medical records can be further complicated by volumes of subsequent treating records which may include any or all of the emergency department, hospital, clinic, physical therapy, chiropractic, specialists, or private physician records. Combing through the volume of records takes time.

Experience teaches the legal nurse consultant which records are most salient to the issues and damages in the personal injury case. Familiarity with the type of medical record and where to quickly find the information expedites the review process. So where do you begin?

Where to Begin

Begin by asking your attorney for copies of all of the medical bills that correspond with the personal injury. For example, if the personal injury involves a motor vehicle accident, the legal nurse consultant would ask for the following medical bills:

- EMS
- Emergency department
- Any and all hospital admissions related to the motor vehicle accident
- All hospital admissions related to the MVA but subsequent to the motor vehicle accident
- Private medical doctor
- Any referral physicians
- Physical therapy
- Chiropractic
- Dental
- Specialist (orthopedic, ENT, oral surgery, ophthalmology, neurologist)
- Any and all diagnostics (X-rays, CTs, MRIs, EMG, nerve conduction studies)
- All follow-up visits

If the personal injury involves a preexisting problem such as a prior back injury and that injury is similar to the injury sustained in the MVA, you will need all preexisting treating records related to the diagnosis, evaluation and treatment of that injury.

Once you have received the medical records and corresponding medical bills you will preliminarily set aside the medical records and focus solely on the medical bills. Resist the urge to read the records first.

Begin by scanning the medical bills for the names of healthcare providers (including professional associate group names and/or associated healthcare facilities), dates of service, service provided, and cost of the service. Utilize the International Classification of Disease [ICD-9] codes and the Current Procedural Terminology [CPT] codes to identify: 1) the diagnosis or diagnoses, 2) the diagnostic procedures, 3)

the evaluation and management of the personal injury, and 4) whether the service was related to the personal injury under review.

List each healthcare provider by name and associate group. Include any and all partners, physician assistants, advanced registered nurse practitioners, or registered nurse first assists, anyone who may see the client (patient) as a physician extender in the physician's absence or under the supervision of the physician. Next list each date of service under the appropriate healthcare provider. Next to the date of service, list the service that was provided such as initial consult, subsequent office visit, or comprehensive consult. List the CPT codes that correspond to the date of service. This identifies what was done for the client/patient. Then list the ICD-9 or diagnosis codes. This helps you evaluate whether the service and/or diagnosis is related to the personal injury.

By simply listing this information you will be creating a framework within which to work. You will know who provided the care. What care was provided, the associated costs involved, and whether it was related to or a result of the motor vehicle accident. It will be easy for you to identify missing records or missing providers by matching the corresponding medical records to the billed dates of service.

By reviewing the medical bills first, you will develop a good feel for the case and be able to cost-effectively meet your attorney's needs by identifying who treated his or her client, when they provided treatment, what was done, the associated cost and whether or not it was related to the personal injury in question, all very important concerns for your attorney.

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Book Review

Slips, Trips, Missteps, and Their Consequences

Gary M. Bakken, H. Harvey Cohen, Jon R. Abele, Alvin S. Hyde and Cindy A. LaRue
Second edition; copyright 2007; 364 pages, hardcover
Publisher: Lawyers & Judges Publishing Company Inc.
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Reviewed by Kara DiCecco, MSN LNCC

Thirteen years ago when I was new to the legal field as an LNC, I did not fully appreciate the amount of attention to detail that would be needed in the profession. As an in-house LNC, part of my orientation was to attend the interview with the paralegal while he or she gathered the client initial information via the interview process. The paralegal would skillfully encourage the client to relay the events of their accident. After about 20 minutes the attorney would enter and, despite the paralegal's thorough notes, the attorney would, after introductions, ask the client to explain again what brought them to the office. During this process, at some point, the client would for a third time review the fact pattern with the attorney. What I thought was a pretty inefficient way to interview was later replaced by my utmost respect for the profession's attention to detail. The attorney explained, as the story is retold new facts emerge but often so do inconsistencies that need to be further explored. In a flash, I understood the effectiveness of the approach. I quickly imprinted this lesson: the smallest detail is capable of becoming information of utmost importance in appreciating the strengths and weaknesses of a case.

The authors of *Slips, Trips, Missteps and Their Consequences* obviously already knew what I had to learn. By their chosen profession and expertise they are masters of analysis and patrons in the art of scrutiny. In five comprehensive parts (a total of 26 chapters, a Fall Prevention Manual and concluding appendices) the authors, Gary M. Bakken, H. Harvey Cohen, Jon R. Abele, Alvin S. Hyde and Cindy A. LaRue provide an intricate, informative, and illuminating look at the dynamics of slip and fall injuries. The writing is relaxed and humorous, which makes the menu of comprehensive data and facts easier to digest. Early on the reader appreciates the value of an expert witness in human factors, ergonomics, and safety research. What we may take for granted as an unavoidable accident is shown to be subject to such factors as poor construction, violation of industry standards, and cost-cutting measures despite an increased risk to the public.

Covering an impressive breadth of medical information, Part one (Chapters 1–10) supplies enough thought-provoking scientific principles to keep the nurse reader enthralled and the attorney student engaged. The text provides an in-depth look into the biologic process of aging *(senescence)* and the pathologic phenomena that affect balance, vision, perception, and spatial relationships. Inarguably, healthcare professionals have a certain level of comfort with their ability to identify those persons at higher risk of falling but this text reveals that knowledge is only a fraction of what needs to be considered. Despite my aversion to anything that resembles an algebraic equation, the authors convincingly demonstrate that mathematical formulas provide an objective analysis of how angles, inclines, friction ratio, and traction demands silently combine to defeat or support safe passage on public walkways. The authors even bring a new and enlightening insight into the tireless efforts of gravity to challenge our coordination every second of the day.

Part two (Chapters 11–13) takes a directed focus on the fall injury itself. Similar to the emergency room physician asking the first responder to describe the damage *inside* the vehicle in order to predict, anticipate, and prepare for the driver's potential injuries, the fall expert scans the factors of the environment to make similar predictions. Factors such as medications ingested, the human compensatory mechanisms, and the injuries associated with specific body parts are just a few of the influences that combine with the principles of physics to provide an objective measure of the likely physical damage.

Part three (Chapters 14–17) assimilates the information into the legal considerations. Using the essential elements of tort law in establishing negligence, the text puts the concepts of duty, breach of duty, proximate cause, and damages into context for the reader. Issues unique to fall injuries such as notice, the potential for multiple defendants, and enhancement factors (such as self-service areas) are straightforwardly discussed along with the various types of surface and material involvement (i.e., ladders, parking lots, showers, hardwood floors to name a few). This section concludes with a list of deposition samples to provide the reader with immediate reinforcement of learning in the principles discussed.

Part four (Chapters 18–26) provides industry standards, authoritative sources, industry definitions, and guidelines controlling public access to elevators and escalators, commercial business walkways, and surfaces. Appropriate coverage is given to handrails, stairs, curbs, garages, and lighting.

Part Five concludes the book with a Fall Prevention Manual that includes practical checklists and considerations of safety factors. This section is particularly helpful in evaluating the likely scenario which led to the fall injury. The checklists review the necessary environmental considerations and provide an invaluable reference list for the legal professional in understanding and assimilating the components of case development. This section alone would be worth purchasing for the obvious advantage it provides in

guiding discovery requests. The appendices that follow the manual are brief but informative sections which highlight key issue such as investigation, measurement, human perception, biomechanical factors, and common falls elements.

It cannot be overstated that for the attorney or LNC working in premises liability, this book is the essential reference and core resource worth the purchase.

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New Insights and Fresh Perspectives

Continued from page 2

looks at "Slips, Trips, Missteps, and Their Consequences." This book is a tremendous resource for anyone in personal injury litigation.

As I close, I know first hand how your article submissions make the *JLNC* possible and how much you have to offer based on your experience and expertise. I will stay with the journal as a reviewer, contributor, and editorial board member, and would love to have the opportunity to see you published — so please accept my invitation to submit. Thank you to all who have submitted during my term. The experience has enriched me so much more than I ever contributed.

Best regards,

Kara DiCecco, MSN, RN, LNCC

Kara DiCecco, MSN RN LNCC
Editor, *The Journal of Legal Nurse Consulting*

2009 Article Index

Volume 20 of *The Journal of Legal Nurse Consulting*

The following index lists articles that have appeared in The Journal of Legal Nurse Consulting *in 2009. The articles are organized alphabetically in three ways: by author, by title, and by topic. Titles of regular or recurring columns are abbreviated at the end of each listing as follows: Book Review (BR), Clinical Maxim (CM), Questions & Answers (QA), References & Resources (RR), and Working World (WW).*

By Author

[author name (last name, first name); issue number:page number]

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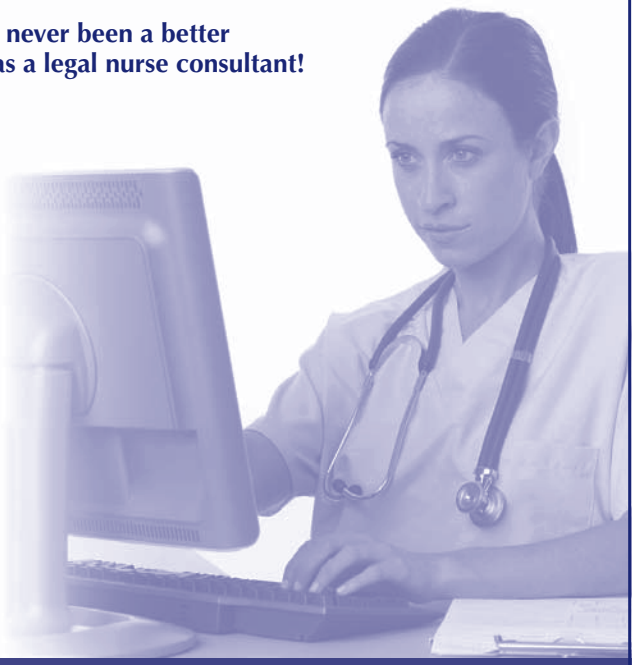

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