

The Journal of
**Legal Nurse
Consulting**

Volume 18 ▲ Number 4 ▲ Fall 2007

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- ▲ Perinatal Morbidity and Mortality
- ▲ Links for Social Security Disability
- ▲ Independent vs. In-House LNC Work
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- ▲ The Integrated Outsourcing Facility

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The Journal of Legal Nurse Consulting

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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

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Angela Pinto Ross, Esq.

Social Security disability benefits are an invaluable economic safety net to disabled individuals during their time of financial and medical need. This two-part series of articles will provide a basic overview of Social Security disability law, including the types of SSA disability programs offered, SSA's definition of disability, the five-step sequential evaluation used by SSA for determining disability, the four-stage adjudicative process, and legal resources available for handling Social Security disability claims.

Social Security Disability Law, Part II: Preparing a Successful Claim 9

Angela Pinto Ross, Esq.

Understanding the system of adjudication in a Social Security disability claim is only a part of the process. The following article, Part II on this topic, focuses on preparing a successful disability claim before the Social Security Administration. The success of a disability claim relies on a well-organized and detailed claim analysis. A detailed analysis is easily achieved if legal nurse consultants and attorneys collaborate to properly develop the claim, analyze the medical evidence, and apply the pertinent legal theory.

Perinatal Morbidity and Mortality: Root Causes and Common Themes in Labor and Delivery Litigation 13

Michelle L. Murray, PhD RNC, & Gayle M. Huelsmann, BSN RNC

According to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), most perinatal deaths and injuries are attributed to the organizational culture and communication among caregivers. An extensive literature search was done to identify cases related to a 2004 JCAHO Sentinel event alert. Cases continue to be identified related to Pitocin misuse and the delay to deliver in a timely manner, which was never identified in the Sentinel event alert. This information continues to be important to legal nurse consultants who are involved in cases of perinatal complications and labor and delivery litigation.

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Appreciating Our Contributors



Thanks to the authors of the Summer 2007 issue of *The Journal of Legal Nurse Consulting* for their exceptional contributions on the issues of Medicare-Set Aside, Worker's Compensation, and Malpractice Insurance for the LNC. And a special thanks to JLNC Editorial Board member Lori Hinton for her exemplary effort and coordination of articles and authors for that issue.

This issue brings you a thorough examination of the representation of Social Security Disability claimants. Angela Pinto Ross has graciously shared her expertise and provided an outstanding overview of the representation process. I, personally, can think of few practice areas so well tailored to utilize the skills of the LNC. As you read, you will likely find it striking that Social Security claims are overwhelmingly driven by the medical documentation. Understanding the impact of the chronic disease process, while subtle to the untrained eye, fits neatly into the purview of the LNC's knowledge. As many readers already know, you do not have to be an attorney to represent Social Security clients before the Administrative Law Judge. As such, the LNC may do well to choose to function independently in this area of practice. I would be remiss, however, not to emphasize that the complimentary needs in successful Social Security representation are legal expertise and medical/nursing knowledge. The combined efforts of attorney representation and LNC assistance prime the claimant's case to prevail in obtaining benefits.

In this issue, we also benefit from the collective experiences of Michelle Murray and Gayle Huelsmann. They provide a comprehensive analysis of the root causes and common themes surrounding the issue of labor and delivery litigation.

As a companion to the two-part Social Security feature, the References and Resources column highlights supplemental online resources for the Social Security Disability Practice. This issue's Questions & Answers column by Rhonda Newberry addresses the differences between being an independent consultant and working in-house. Beth Diehl-Svrjcek enthusiastically shares her book review of *Nursing Malpractice* (3rd edition). Beth provides a convincing argument for making this book a part of the LNC's library.

Lastly, The Journal is pleased to continue the LNC Technology column. This is designed to introduce our readers to the variety of services and cutting-edge technology available to the LNC to enhance your practice. Whether you are a seasoned LNC or just beginning your career, staying informed of the available industry services and evolving technology is a mark of true excellence.

As I close this Editorial Column, I want to extend a special note of thanks and appreciation to Theresa Fulginiti and Jan Aikens for their commitment to the JLNC and their participation on the Editorial Board. As their volunteer commitment to The Journal has come to a close, it is important to recognize that their priceless contribution of time, expertise, and hard-work are truly missed.

As always, the JNLCC welcomes your suggestions and manuscript submissions.

Sincerely

KARA DiCECCO, MSN, RN, LNCC

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Editor, *The Journal of Legal Nurse Consulting*

Social Security Disability Law, Part I: A Primer

Angela Pinto Ross, Esq.

KEY WORDS
Social Security Disability

According to the Social Security Administration (SSA), studies have shown that a 20-year-old worker has a 3-in-10 chance of becoming disabled before reaching the age of retirement. Given these dramatic statistics, Social Security disability benefits are an invaluable economic safety net to disabled individuals during their time of financial and medical need. This two-part series of articles will provide a basic overview of Social Security disability law, including the types of SSA disability programs offered, SSA's definition of disability, the five-step sequential evaluation used by SSA for determining disability, the four-stage adjudicative process, and legal resources available for handling Social Security disability claims. This primer will further discuss how attorneys and legal nurse consultants (LNCs) in collaboration play pivotal roles in presenting successful disability claims before the SSA. Part I will address the specifics of qualifying for Social Security disability, as well as the adjudication process; Part II will explore preparing a successful SSA disability claim.

Since 1950, the Social Security Administration (SSA) has offered a disability benefits program as part of the Social Security Act. The disability benefits were aimed at providing economic security to eligible individuals unable to work full-time for at least a year on a regular and consistent basis as result of medical conditions. The disability benefits have included cash benefits as well as health insurance. At its inception in 1935, however, federal legislators declined to offer disability benefits within the Social Security Act, believing it better to earn one's food and shelter rather than receive charity. Over the years, the federal government has softened its position; 72 years later, SSA now offers a wide range of disability programs including Social Security Disability Insurance and Supplemental Security Income.

The original Social Security Act of 1935 instituted a federal old-age benefits program and various federal-state programs covering the elderly, blind, unemployed, and dependent and handicapped children. It did not, however, establish a program for benefits to the disabled. In 1950, Congress included disability as a basis for receiving benefits through a joint federal-state welfare program known as Aid to the Permanently and Totally Disabled. Six years after that, Congress added disability coverage to the Act's insurance program, thereby expanding to the current Old Age, Survivors, and Disability Insurance Program. In 1973, the joint federal-state Aid to the Permanently and Totally Disabled program was replaced by Supplemental Security Income, a federal welfare program for the elderly, blind, and disabled.

Social Security Disability Programs

The two primary programs offered by SSA are Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Other benefit programs offered but not detailed in this article are Survivors benefits, Adult Child Disability benefits, and Child SSI benefits.

Social Security Disability Insurance (SSDI): This insurance program for workers and their dependents is similar to a long-term disability policy with the government. To be "currently insured" under this program, a claimant generally must have

worked for at least 20 quarters and must have worked 5 of the last 10 years (42 U.S.C. §403[b]). The calendar year is broken down into 4 quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 (42 U.S.C. §413[a]). Currently in 2007, earning \$1,000 per quarter is sufficient to receive credit for that quarter. Simply put, a worker must contribute to the Social Security program over a sufficiently long period to be "currently insured" and contribute to the program recently enough to have "disability insured status." Similar to a private long-term disability policy, a claimant's insured status with SSA will eventually lapse if he or she stops working and earning quarters (usually 5 years after stopping working).

Under the SSDI program, benefits are not paid to the claimant for the first 5 months of their disability (42 U.S.C. §423 [c][2][A]). This is known as the "5-month waiting period." Benefits will be paid as of the sixth full month after the date of a claimant's disability began. The amount of a claimant's SSDI benefits are based on the length and amount of earnings received during his or her lifetime (42 U.S.C. §414). Because SSDI benefits are based upon earnings, the amount of benefits payable can range from as little as \$100 to as high as \$2,000.

In addition, SSA will only pay past-due benefits 1 year prior to the date of application for benefits. If a claimant became disabled and unable to work on September 30, 2004, but did not apply for SSDI until January 1, 2007, the maximum amount of past-due benefits that the claimant would be paid is 1 year prior, i.e., January 1, 2006. Unfortunately, the claimant will not be paid benefits from the date they first became unable to work since they did not apply earlier. If a claimant had prior claims for SSDI benefits, however, the prior claims may be re-opened, which could possibly extend the amount of past-due benefits payable.

In addition to the claimant's benefits, certain family members may also qualify for SSDI benefits. These family members include: 1.) a spouse, if he or she is 62 or older, or at any age if caring for the claimant's child who is younger than 16 or disabled; 2.) an unmarried child who is younger

than 18, or 19 and still in full-time secondary school; and 3.) an unmarried child who is age 18 or older who has a disability that started before the age of 22 (20 C.F.R. §404.339 and §404.350). Typically, eligible family members equally share an additional 50% of the claimant's SSDI benefits. After a family member loses their eligibility, their portion of benefits is divided among the remaining family members.

SSDI recipients are also eligible for Medicare health insurance coverage after 24 months of paid disability benefits. A claimant must pay a monthly premium for the Medicare coverage, which is deducted from his or her monthly benefit. In certain situations, state medical assistance programs (Medicaid) may pay the monthly premiums.

Supplemental Security Income (SSI): This is a federal welfare program for claimants who are disabled, blind, or older than age 65 (20 C.F.R. §416.110). To be eligible under this program, the claimant must be 1.) disabled; 2.) meet an income and resource test; and 3.) be a U.S. citizen or fall into the group of limited exceptions to the citizenship rule (20 C.F.R. §416.200-204).

SSI benefits are paid out of general revenues, not out of the Social Security trust fund. Many states supplement the amount of federal SSI benefits; therefore, the SSI benefit amount varies from state to state. The SSI asset limitation is \$2,000 for an individual and \$3,000 for a couple. Several assets are excluded, such as a claimant's home and car if it is used for work or to obtain medical care (20 C.F.R. §416.1100-1266).

Claimants may receive both SSDI and SSI benefits if the SSDI benefits are low enough. When both kinds of benefits are received, the recipient's total income from the two programs equals the SSI benefit amount plus \$20. If the amount of a claimant's SSDI benefits disqualifies him or her receiving SSI, however, he or she still may get SSI during the 5-month waiting period when no SSDI benefits are paid.

SSI offers no dependent benefits and are paid retroactively from the date of the claimant's application (20 C.F.R. §416.501). SSI also does not have a "5-month waiting period." SSI recipients are eligible for Medicaid as health insurance. There is no monthly premium for Medicaid.

Definition of Disability

SSA (2004) defines disability as:

"An inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment (or combination of impairments) which can be expected to result in death or has lasted or is expected to last for a continuous period of not less than 12 consecutive months" (42 U.S.C. §423[d]).

SSA (2004) further states:

"An individual shall be determined to be under a disability only if his or her physical or mental impairment or impairments are of such severity that the claimant is not only unable to do his or her previous work but cannot, considering his or her age, education, and work experience, engage in any other kind of substantial

gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which the claimant lives or whether a specific job vacancy exists for him or her, or whether the claimant would be hired if he or she applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country" (42 U.S.C. §423 [d][2][A] and 1382c[a][3][B]).

Five-Step Evaluation

Social Security utilizes a five-step sequential evaluation to determine whether an adult individual is disabled under either SSDI or SSI. Under this five-step sequential evaluation, a claimant must satisfy the following criteria to be found disabled: a) Does not engage in "substantial gainful activity" (SGA); b) has a "severe" impairment; c) the impairment meets or "equals" one of the impairments described in SSA's regulations known as the "Listing of Impairments"; or; d) considering the claimant's "residual functional capacity" (RFC), i.e., what the claimant can still do even with his or her impairments, the claimant is unable to do "past relevant work" (PRW); and e) other work within the claimant's RFC, considering age, education and work experience, does not exist in the national economy in significant numbers (20 C.F.R. §404.1520).

Step One: Is the claimant working and performing SGA? This is any work activity that involves considerable physical or mental activities, even if on a part-time basis that a claimant does for pay or profit (20 C.F.R. §404.1520(b), 404.1572 and 404.1574). Activities such as household chores, hobbies, therapy, taking care of personal needs, school attendance, and club activities are usually not considered SGA. Currently in 2007, Social Security classifies substantial gainful activity as the ability to earn \$900 per month. If a claimant is performing such activity, he or she will be denied benefits at step one.

Step Two: Does the claimant have a severe medical impairment? A severe impairment is an impairment or combination of impairments that significantly limits a claimant's physical and mental ability to do basic work activities (20 C.F.R. §404.1520[c], 404.1521 and 404.1509). The medical condition must also meet the durational requirement of 1 year. If a claimant does not have a severe impairment, then he or she will be denied at step two.

Step Three: Does the claimant qualify under the Listing of Impairments? The listings describes each of the major body systems' impairments that SSA considers to be severe enough to prevent an individual from doing any gainful activity regardless of his or her age, education, or work experience. Each listing describes the condition existing at a severe level. If a claimant can demonstrate an impairment that meets the 12-month durational requirement, and either meets or equals a listing found in 20 C.F.R Part 404 subpart P, Appendix 1, he or she may be found automatically

disabled at this step. If a claimant does not meet or equal a listing, then the evaluation proceeds to step four. Prior to advancing to step four, a claimant's RFC must be determined (20 C.F.R. §404-1520[e] and 404.1545). See Table 1 for an explanation of the RFC.

Table 1. The Residual Functional Capacity Evaluation.

In assessing a claimant's RFC, the total limiting effects of all of a claimant's impairments must be considered. In short, RFC is a determination of the most a claimant is capable of performing despite his or her physical and/or mental limitations. RFCs are typically evaluated as either sedentary, light, medium or heavy. To ascertain a claimant's RFC, a claimant's physical exertional capability for walking, sitting, standing, lifting, carrying, bending, and stooping are assessed. Non-exertional limitations may also be considered, e.g., postural and environmental limitations.

Step Four: Does the claimant have the ability to perform PRW? If a claimant is found to have the ability to perform this work despite impairments, he or she is found not disabled at step four of the evaluation. PRW is defined as work that the claimant performed within the past 15 years of the alleged onset date of disability (20 C.F.R. §404.1520[f], 404.1560[b] and 404.1565). For a job to be considered PRW, the job must have lasted long enough for the claimant to learn the position and was performed at SGA levels. In evaluating whether a claimant can perform past relevant work, SSA assesses the mental and physical demands of the PRW, the claimant's mental and physical conditions, and what the claimant can still do on a consistent basis despite his or her impairments. If the claimant cannot perform his or her past work, then the evaluation advances to step five.

Step Five: Does the claimant have the ability to perform other work that is available in significant numbers in the regional and national economy, taking in account the claimant's age, education, work history, and RFC? At step five, the burden shifts to SSA to prove that there are jobs in the regional and national economy in significant numbers that the claimant is capable of performing. Social Security will consider the claimant's age, education, past work experience, and RFC (20 C.F.R. §404.1520[g]).

There are two methods to determine whether there are a significant number of jobs that a claimant can perform in the economy despite his or her impairments: 1.) the Medical-Vocational Guidelines or 2.) vocational expert testimony. The medical-vocational guidelines (also known as the "Grid") are a series of charts separated according to exertional level, i.e., sedentary, light, medium, and heavy (20 C.F.R. Pt. 404, Subpart P, App. 2 [Grid]). The charts are further divided into categories of age, education, and past work experience. The "Grid" mandates a finding of disabled or not disabled based upon a claimant's age, education, and capacity for work. If a claimant suffers from only exertional impairments, i.e. only physical impairments, the medical-vocational guidelines must be applied to determine disability status.

On the other hand, if a claimant suffers from only non-exertional impairments, e.g. pain, anxiety, stress, memory impairment, etc., the "grid" is not used and testimony from a

vocational expert is obtained. If a claimant has a combination of both exertional and non-exertional impairments, the "grid" provides only a framework for a disability determination and vocational expert testimony is obtained. If Social Security determines that there is no other work in the national economy that the claimant can perform, then the claimant is found disabled.

Adjudication Process: Federal Court

Initial Application

A claimant initiates a claim by telephoning the Social Security Administration (800-772-1213). A SSA phone representative makes an appointment for the claimant with a SSA representative at a local SSA office. The claimant can also make an in-person appointment at a local Social Security office to complete an application. However, many claimants decide to make a telephone appointment with a SSA claims representative who calls the claimant at a scheduled time. A claimant may also file an initial application via SSA's Web site.

During the initial appointment, the SSA claims representative gathers the following: 1.) The claimant's birth certificate; 2.) the names and addresses of a claimant's medical providers; 3.) the claimant's medications; 4.) any hospital admissions, outpatient or inpatient; 5.) the dates of any laboratory and/or diagnostic tests performed; and 6.) the claimant's past 15 years of employment (20 C.F.R. §404.900-996 and 20 C.F.R. §416.1400-1406).

Once the claimant's application is complete, SSA will transfer the claim to a state agency commonly known as "Disability Determination Services" (DDS) to adjudicate the claim. DDS, rather than SSA, makes the determination as to a claimant's disability. An adjudicator at DDS is assigned to the claim and gathers all of the claimant's medical records, obtains various completed questionnaires from the claimant, and possibly schedules a consultative exam with a medical professional hired by SSA. After all of the necessary evidence is gathered, the DDS adjudicator prepares the claim for examination by a DDS state agency medical consultant. The medical consultant renders an opinion as to the claimant's ability to work. Neither the DDS adjudicator nor the medical consultant meets with the claimant in person. After DDS reaches a decision, the claimant receives a notice in the mail whether he or she has been found disabled. If Social Security denied the initial claim, the claimant has 60 days to submit a Request for Reconsideration of SSA's initial determination.

In ten states (Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New Hampshire, Pennsylvania, and parts of New York and California), SSA has eliminated the reconsideration step as part of a prototype program. A claimant instead submits a Request for an Administrative Law Judge hearing after receiving the initial denial from SSA.

Reconsideration

Reconsideration, the second level of the administrative process, offers the claimant an opportunity to request SSA

to reconsider the denial of the claim. SSA receives the reconsideration request and forwards the claim to DDS again. A different adjudicator at DDS is assigned to the claim, who updates the claimant's medical records and any other documentation. Likewise, a different state agency medical consultant reviews the evidence and makes a decision as to the claimant's disability. Again, neither the adjudicator nor the medical consultant meets with the claimant in person. A written notice is mailed to the claimant. If SSA issues a second denial, the claimant has the right to file a Request for an Administrative Law Judge Hearing within 60 days of the reconsideration denial (20 C.F.R. §404.907-922 and 20 C.F.R. §416.1407-1422).

Administrative Law Judge Hearing

An Administrative Law Judge (ALJ) hearing is a de novo, informal and non-adversarial hearing where the claimant has an opportunity to explain to a SSA representative, i.e., ALJ, why he or she is disabled and unable to work. Unfortunately, a claimant has a significant wait period to obtain a hearing date that varies from region to region, ranging from months to even years. Once a hearing is scheduled, the claimant may appear in person before the ALJ or by video teleconferencing. If a claimant declines to appear by video, the ALJ must reschedule the hearing so that the claimant can appear in person.

Prior to the hearing, the claimant's representative should update and submit the claimant's medical records to the ALJ. During the hearing that is recorded, the ALJ and the claimant's representative may question the claimant about his or her medical conditions and functional limitations. The ALJ may also obtain vocational and medical expert testimony. Although paid by SSA, medical and vocational experts must testify as independent witnesses. A claimant may also bring witnesses such as friends and family to testify on their behalf. The hearing generally lasts about an hour. Typically, the ALJ does not render a decision at the hearing. Approximately 60 to 90 days after the hearing, the ALJ issues a written decision that is mailed to the claimant and the representative. The ALJ may issue either a "fully favorable," "partially favorable," or "unfavorable" decision. If the decision rendered by the ALJ is not completely favorable, the claimant may appeal to the Appeals Council within 60 days of the ALJ decision (20 C.F.R. §404.929-943 and 20 C.F.R. §416.1444-1461).

Appeals Council

Upon receipt of an appeal, the Appeals Council reviews claims to determine if: 1.) Any errors of law or fact were committed; and 2.) the hearing decision is not supported by substantial evidence. The Appeals Council is a paper appellate review, and no hearing takes place. The claimant's representative may request a copy of the recorded hearing on CD and submit a legal brief in support of the claimant's appeal. Because the Appeals Council review may take up to 2 years to reach a decision on appeal, a claimant may file a new application while the prior claim is pending at the Appeals

Council. The Appeals Council may decline to review the decision of the ALJ, in which case the decision of the ALJ becomes the final decision of the Commissioner of Social Security on the claim, subject to court review. The Appeals Council may also review the decision of the ALJ and affirm it, modify it, reverse it, or remand it for a new hearing (20 C.F.R. §404.966-981 and 20 C.F.R. §416.1466-1482).

Federal Court

If the Appeals Council denies the claimant's appeal, the claimant may file a civil action in the United States District Court for the district where the claimant lives. The Commissioner of Social Security is named as defendant. The court has the power to affirm, modify, or reverse the decision of the Commissioner and may remand the claim for another hearing or approve the claim without an additional hearing (20 C.F.R. §405[g]).

If the U.S. District Court denies the claimant's appeal, the claimant may appeal to the United States Court of Appeals for the circuit in which the district court sits. If the Court of Appeals declines the claimant's case, the claimant may file a petition for certiorari with the United States Supreme Court.

Disability Service Improvement

On August 1, 2006, SSA altered the administrative appeal process and established the Disability Service Improvement (DSI) program to streamline the administrative process and reduce the length of time for receiving Social Security decisions. DSI currently operates in the states of Connecticut, Maine, Rhode Island, New Hampshire, Vermont, and Massachusetts. SSA may gradually expand DSI to the remaining states in the country if successful.

SSA implemented DSI to achieve more expeditious disability determinations at all levels, including the initial application. Certain initial claims are automatically referred from SSA to DDS for a Quick Disability Determination, with the goal of making a favorable determination within 20 days (20 C.F.R. §405.105). For all initial applications, including Quick Disability Determination cases, SSA requires DDS to use a standard writing format that clearly explains in understandable language the decision rendered and the reasons for the decision (20 C.F.R. §405.115).

No Reconsideration stage exists in DSI; claimants who are denied initially must request review by a federal reviewing official. If the federal reviewing official denies the claim, the claimant may request a hearing before an Administrative Law Judge (20 C.F.R. §405.201).

The Appeals Council no longer exists under DSI, replaced by a Decision Review Board. The Decision Review Board deals only with own motion review of both unfavorable and favorable decisions. The claimant is notified within the notice of the ALJ decision if the case has been selected for review by the Decision Review Board. If the Decision Review Board takes no action within 90 days of the ALJ decision, the decision becomes final and is appealable to Federal District

Court (20 C.F.R. §405.427, 405.371, 405.475, 405.420 and 405.501). Table 2 provides an extensive listing of the resources for the Social Security Rules and Regulations.

Table 2. Social Security Legal Sources and Resources.

The following listing is intended to be an authoritative list of available resources that will help attorneys and LNCs handle disability claims before SSA.

Statute: Title II, Social Security Disability Insurance Benefits, 42 U.S.C. § 402 et. seq. and Title XVI, Supplemental Security Income, 42 U.S.C. § 1381 et. seq. See www.socialsecurity.gov/legislation.

Regulations: The regulations explain SSA's interpretation of the statute. Social Security Disability Insurance Benefits, 20 C.F.R. 404.1 et seq. and Supplemental Security Income, 20 C.F.R. 416.1 et seq. Regulations are available on www.ssa.gov/regulations.

Social Security Rulings (SSR) and Acquiescence Rulings (AR): SSRs state Social Security policy or interpretation of the Social Security act, regulations, or court decisions with which SSA agrees. AR are Circuit holdings which SSA will apply only in the particular circuit. The rulings are available on www.ssa.gov/OP_Home/rulings.

HALLEX (Hearings, Appeals, Litigation and Law): This is the instruction manual used by Administrative Law Judges and Appeals Council. HALLEX contains both substantive and procedural material for all cases under jurisdiction of the ALJ and the Appeals Council. HALLEX is also available on www.ssa.gov/OP_Home/hallex.

POMS (Program Operations Manual Systems): This is the instruction manual used by local district offices and its instructions are binding at the initial and reconsideration stages. POMS are available on-line on www.ssa.gov.

Cases: SSDI and SSI cases are appealed to federal district court and then to the circuit court of appeals. See www.supremecourtus.gov, www.uscourts.gov, and www.findlaw.com/cascode. Case law can also be accessed through Lexis and Westlaw.

Conclusion

As a significant portion of the population ages and becomes unable to work due to poor health, Social Security disability benefits are more important than ever for disabled claimants to achieve economic security. Given the complexity of Social Security Disability law, disabled claimants require quality representatives to represent them before SSA. LNCs involved in these cases should have a thorough understanding of the types of SSA disability programs offered, the five-step sequential evaluation, and the adjudication process prior to handling a Social Security claim.

References

- 20 C.F.R. Part 404.1 et seq.
- 20 C.F.R. § 404.339.
- 20 C.F.R. § 404.350.
- 20 C.F.R. § 404.900-996.
- 20 C.F.R. § 404.907-922.
- 20 C.F.R. § 404.929-943.
- 20 C.F.R. § 404.966-981.
- 20 C.F.R. § 404.1509.
- 20 C.F.R. § 404.1520.
- 20 C.F.R. § 404.1520(b).
- 20 C.F.R. § 404.1520(c).
- 20 C.F.R. §404.1520(e).
- 20 C.F.R. §404.1520(f).
- 20 C.F.R. § 404.1520(g).
- 20 C.F.R. § 404.1521.
- 20 C.F.R. § 404.1545.
- 20 C.F.R. § 404.1560(b).
- 20 C.F.R. § 404.1565.
- 20 C.F.R. § 404.1572.
- 20 C.F.R. § 404.1574.
- 20 C.F.R. § 405(g).
- 20 C.F.R. § 405.115.
- 20 C.F.R. § 405.201.
- 20 C.F.R. § 405.420.
- 20 C.F.R. § 405.427.
- 20 C.F.R. § 405.371.
- 20 C.F.R. § 405.475.
- 20 C.F.R. § 405.501.
- 20 C.F.R. § 416.1 et seq.
- 20 C.F.R. § 416.110.
- 20 C.F.R. § 416.200-204.
- 20 C.F.R. § 416.501.
- 20 C.F.R. § 416.1100-1266.
- 20 C.F.R. § 416.1400-1406.
- 20 C.F.R. § 416.1407-1422.
- 20 C.F.R. § 416.1444-1461.
- 20 C.F.R. § 416.1466-1482.
- 20 C.F.R. Pt. 404, Subpart P, App. 2 (Grid).
- 42 U.S.C. § 401 et seq.
- 42 U.S.C. § 402 et seq.
- 42 U.S.C. § 403(b).
- 42 U.S.C. § 405(g).
- 42 U.S.C. § 413(a).
- 42 U.S.C. § 414.
- 42 U.S.C. § 423(c)(2)(A).
- 42 U.S.C. § 423(d).
- 42 U.S.C. § 423(d)(2)(A).
- 42 U.S.C. §1381 et seq.
- 42 U.S.C. § 1382c9a0(3)(B).

Billman, B. & Hogan, J. (2005, May). *Introduction to Social Security*. Paper presented at the conference of the National Organization for Social Security Claimants' Representatives, Washington, D.C.

Bush, T. (2006). *Social Security Disability Practice, 2nd Ed.*, California: James Publishing, Inc.

Roose, K., Silverstone, B., & Wladyka, A. (2004, November). *Introduction to Social Security, Disability, and SSI Benefits*. Paper presented at the conference of the National Organization for Social Security Claimants' Representatives, Philadelphia, PA.

Schnauffer, E. & Scully, T. (2007, April). *Social Security Disability Practice: The Basics*. Paper presented at the conference of the National Organization for Social Security Claimants' Representatives, Baltimore, MD.

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Social Security Disability Law, Part II: Preparing a Successful Claim

Angela Pinto Ross, Esq.

KEY WORDS
Social Security Disability

Understanding the system of adjudication in a Social Security disability claim is only a part of the process. This article, Part II on this topic, focuses on preparing a successful disability claim before the Social Security Administration. The success of a disability claim relies on a well-organized and detailed claim analysis. A detailed analysis is easily achieved if legal nurse consultants and attorneys collaborate to properly develop the claim, analyze the medical evidence, and apply the pertinent legal theory.

The following represents selected important factors that legal nurse consultants (LNCs) and attorney must address together to have a worthwhile Social Security disability claim: 1.) establishing a relationship with your client; 2.) documenting the claimant's disabilities; 3.) thoroughly analyzing the medical evidence; and 4.) extensively preparing the claimant's testimony.

Good Relationships

Establish a good relationship with your client. Creating a bond with the client is essential to properly representing the client's claim. Without your client's trust and confidence, important factual and medical evidence may fail to be disclosed. Clients often will not disclose pertinent medical information, believing it is not relevant or being embarrassed by their medical conditions. The key to developing an effective relationship is regularly taking your client's telephone calls and showing a genuine interest in helping them.

Another important element is meeting with the client in person. Many facts can be garnered simply discussing a client's claim face-to-face. For example, the client may be using an assistive device or show signs of increased pain. Speaking only over the telephone fails to reveal these important limitations. In addition, with mental impairment claims, a representative can assess the severity of the claimant's depression and recommend treatment necessary to prove the claim. Overall, spending quality time with your client is a significant component of developing a strong claim.

Document! Document! Document!

Documenting a claimant's disability and its functional limitations is of the utmost importance in a presenting a viable claim. Medical records, reports, tests, evaluations, exams, etc. are "must" items in proving a case. A representative preliminarily should obtain a comprehensive list of the claimant's medical providers, including but not limited to physicians, psychiatrists, nurses, psychologists, mental health therapists, physical, occupational and speech therapists, chiropractors, and home nursing providers.

Prior to requesting the claimant's medical records, the representative should get a copy of the Social Security file if the claimant has already filed. The SSA file contains a wealth of information that will provide a starting point for developing a claim. SSA is converting to electronic recordkeeping, so it is even easier now to get a copy of the client's Social Security file on CD. After obtaining the SS file, gathering medical records as early as possible is recommended because the records may disclose additional providers not mentioned by the claimant.

Documentation of a claimant's medications is likewise essential. A representative should advise a claimant to bring all of their medication bottles to them for proper and accurate information about dosage and medication names. Other records that may be helpful in proving SSDI/SSI claims are school records, employment records, private long-term disability records, workers' compensation records, and vocational rehabilitation records. Letters of support from family, friends, former employers, and former co-workers are also considered in assessing a claimant's case for disability benefits.

Lastly and most importantly, medical source statements and/or RFC assessments from the claimant's treating medical providers are crucial in supporting a claimant's case. RFC assessments are questionnaires that medical providers complete that address diagnoses, prognosis, medications and side effects, functional limitations, the claimant's pain level and how the pain interferes with his or her attention and concentration, and the number of expected unscheduled breaks and days absent from work due to illnesses. One RFC assessment, however, does not fit for all claimants. Representatives should have a RFC assessment specifically developed according to the claimant's conditions. Since RFC assessments are medically driven, LNCs play a vital role in developing an appropriate RFC assessment for each claimant. In addition to considering the claimant's conditions and supporting medical evidence, LNCs should also consider the criteria in the Social Security Listings when developing a claimant's RFC assessment.

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Thorough Analysis

After documentation of the claimant's file is complete, a thorough analysis of the medical evidence should be performed. During the medical evidence review, special attention should be paid to objective findings upon examination of the claimant, as well as diagnostic tests performed. Any treating physician opinions in support of the claimant's inability to work should also be noted. LNCs can prepare a medical summary outlining the evidence that supports the client's claimed impairments, as well as any possible arguments that a claimant's condition meets or equals a Listing.

Prepare Claimants for Testifying

A claimant's credibility is equally as important as well-documented medical evidence; therefore preparing the claimant for testifying is essential and will prevent any inconsistent statements or credibility problems. Prior to a hearing, representatives should always meet with the claimant and review the documentation in the Social Security record, particularly any statements given by the claimant to SSA or treating physicians.

The preparation appointment should focus on providing consistent testimony that supports the claimant's alleged impairments. If a client testifies that he is capable of driving but claims to have poor eyesight, for example, this testimony is inconsistent and should be avoided. With extensive medical background, LNCs can assess whether the claimant is exaggerating the severity of the symptoms given the type of condition the claimant may be experiencing.

A description of what will happen at the hearing, as well as the types of questions that will be asked, should also be addressed in the preparation appointment. The "dos" and "don'ts" of testifying should be reviewed, and written instructions about testifying are helpful to provide to the claimant. Overall, taking quality time to prepare the claimant prior to a hearing will pay dividends in the end. Earning the trust of the claimant, spending quality time preparing the claimant, gathering all the medical evidence, and analyzing it thoroughly sets the Social Security claim on a solid foundation toward a favorable decision.

Table 1. Written Resources on Social Security Disability.

Dictionary of Occupational Titles, (4th ed. Rev. 1991) and *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles* (1993). This resource predates the online version, O*Net. The DOT contains categories of all jobs listed in the national economy and further distinguishes them by exertional level, educational requirements, specific vocational preparation and more.

Disability Evaluation Under Social Security (June 2006). A copy can be obtained via www.ssa.gov.

Bush, T. E. (2006). *Social Security Disability Practice* (2nd ed.) California: James Publishing.

A table of contents for this publication can be found at www.jamespublishing.com/contents/ssdcont.htm. This publication is supplemented annually.

Bohr, S. H. & Harrington, C. J. (2004) *Social Security Issues Annotated*, California: James Publishing.

This resource provides assistance for attorneys on preparing briefs for District Court Appeals. A table of contents for a more recent printing of this publication can be found at www.jamespublishing.com/contents/ssicont.htm. This publication is supplemented annually.

Conclusion

The LNC who understands the system of adjudication in a Social Security disability claim can play a key role in preparing a successful disability claim before SSA. This preparation requires a well-organized detailed claim analysis, which is easily achieved if the LNC and the attorney work effectively together. Armed with a keen understanding of Social Security disability law, LNCs can help ensure that the Social Security disability claim reach a favorable conclusion.

References

- 20 C.F.R. Part 404.1 et seq.
- 20 C.F.R. § 404.339.
- 20 C.F.R. § 404.350.
- 20 C.F.R. § 404.900-996.
- 20 C.F.R. § 404.907-922.
- 20 C.F.R. § 404.929-943.
- 20 C.F.R. § 404.966-981.
- 20 C.F.R. § 404.1509.
- 20 C.F.R. § 404.1520.
- 20 C.F.R. § 404.1520(b).
- 20 C.F.R. § 404.1520(c).
- 20 C.F.R. § 404.1520(e).
- 20 C.F.R. § 404.1520(f).
- 20 C.F.R. § 404.1520(g).
- 20 C.F.R. § 404.1521.
- 20 C.F.R. § 404.1545.
- 20 C.F.R. § 404.1560(b).
- 20 C.F.R. § 404.1565.
- 20 C.F.R. § 404.1572.
- 20 C.F.R. § 404.1574.
- 20 C.F.R. § 405(g).
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- 20 C.F.R. § 405.420.
- 20 C.F.R. § 405.427.
- 20 C.F.R. § 405.371.
- 20 C.F.R. § 405.475.
- 20 C.F.R. § 405.501.

- 20 C.F.R. § 416.1 et seq.
- 20 C.F.R. § 416.110.
- 20 C.F.R. § 416.200-204.
- 20 C.F.R. § 416.501.
- 20 C.F.R. § 416.1100-1266.
- 20 C.F.R. § 416.1400-1406.
- 20 C.F.R. § 416.1407-1422.
- 20 C.F.R. § 416.1444-1461.
- 20 C.F.R. § 416.1466-1482.
- 20 C.F.R. Pt. 404, Subpart P, App. 2 (Grid).
- 42 U.S.C. § 401 et seq.
- 42 U.S.C. § 402 et seq.
- 42 U.S.C. § 403(b).
- 42 U.S.C. § 405(g).
- 42 U.S.C. § 413(a).
- 42 U.S.C. § 414.
- 42 U.S.C. § 423(c)(2)(A).
- 42 U.S.C. § 423(d).
- 42 U.S.C. § 423(d)(2)(A).
- 42 U.S.C. § 1381 et seq.
- 42 U.S.C. § 1382c9a0(3)(B).
- Billman, B. & Hogan, J. (2005, May). *Introduction to Social Security*. Paper presented at the conference of the National Organization for Social Security Claimants' Representatives, Washington, D.C.
- Bush, T. (2006). *Social Security Disability Practice*, 2nd Ed., California: James Publishing, Inc.
- Roose, K., Silverstone, B., & Wladyka, A. (2004, November). *Introduction to Social Security, Disability, and SSI Benefits*. Paper

presented at the conference of the National Organization for Social Security Claimants' Representatives, Philadelphia, PA. Schnauffer, E. & Scully, T. (2007, April). *Social Security Disability Practice: The Basics*. Paper presented at the conference of the National Organization for Social Security Claimants' Representatives, Baltimore, MD.

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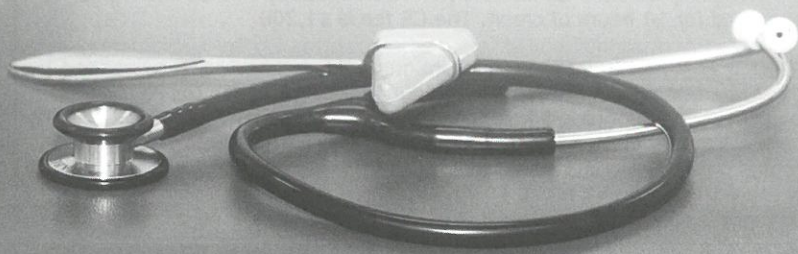
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Perinatal Morbidity and Mortality: Root Causes and Common Themes in Labor and Delivery Litigation

Michelle L. Murray, PhD RNC, & Gayle M. Huelsmann, BSN RNC

KEY WORDS
Labor & Delivery, Perinatal

According to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), most perinatal deaths and injuries are attributed to the organizational culture and communication among caregivers. An extensive literature search was done to identify cases related to a 2004 JCAHO Sentinel Event Alert #30. Cases continue to be identified related to Pitocin misuse and the delay to deliver in a timely manner, which was never identified in the Sentinel Event Alert. This information continues to be important to legal nurse consultants who are involved in cases of perinatal complications and labor and delivery litigation.

In 2004, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) reported that most perinatal deaths and injury had root causes related to the organizational culture and communication among caregivers. Additional root causes included:

1. Inadequate fetal monitoring;
2. Unavailable equipment and/or drugs;
3. Credentialing/privileging/supervision of physicians and nurse midwives;
4. Staffing issues;
5. Physician unavailable or delayed;
6. Unavailable prenatal information;
7. Staff competency; and the
8. Orientation and training process (Sentinel event alert, 2004).

A literature review was conducted at the University of New Mexico Law Library during the spring of 2007 to identify cases related to perinatal death and injury to see if negligence claims were congruent with the JCAHO sentinel event alert. While many claims were related to JCAHO's findings, there were also many claims related to oxytocin (Pitocin) misuse.

Communication Among Caregivers

Labor and Delivery nursing is a specialty. Ewing v. Aubert (1988 La. App. 1 Cir. 532 So. 2d 987) explained that specialty nurses are expected to have the same knowledge and skill as other nurses working in that specialty under similar circumstances and to use that knowledge, reasonable care, and their best judgment when applying their skills.

In Seef v. Ingalls Memorial Hospital (1999 Ill. App. 1 Dist. 311 Ill. App. 3d 7, 724 N.E. 2d 115), the court left open the question of whether a nurse could be found liable for not going up the chain of command when the physician took no action. In this case, the physician testified that, even if he had seen the fetal monitor strips earlier, he would not have delivered the baby any sooner.

The Association of Women's Health, Obstetrics and Neonatal Nurses (AWHONN) published the following statement related to the chain of command: "The nurse must initiate an appropriate course of action when, after careful deliberation, the issue is determined to be a matter of maternal/fetal well being..." (Association of Women's, 2003, p. 232).

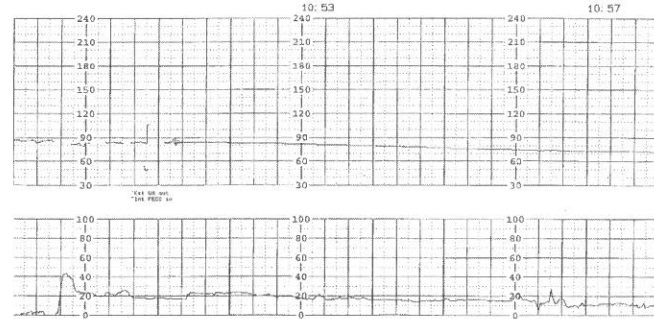
AWHONN further explained that, if discussions with the physician or certified nurse midwife do not result in appropriate care for that clinical situation, the nurse has the responsibility to use the perinatal unit institutional chain of command to ensure appropriate and timely intervention.

The chain of command should also be used when the provider is absent, impaired, or clearly wrong in their plan of care or treatment, and fetal or maternal jeopardy appears to be likely. Since JCAHO requires every hospital to have a chain of command, staff nurses should know their institution's protocol. Usually the staff nurse notifies their immediate supervisor, e.g., unit coordinator, charge nurse, house supervisor, or nurse manager. That individual would then review the situation and reasonable actions that should be taken. They would then be expected to speak to the physician or midwife to find a way to resolve the issue, e.g., change the plan of care to optimize maternal or fetal health. In some instances, it may be necessary to go further up the chain of command and involve the Chief of Obstetrics, nursing administrator or the Chief of the Medical Staff or the Vice Chief of the Medical Staff in the rare instance when the attending obstetrician is the Chief of Obstetrics and the Chief of the Medical Staff.

Failure to communicate and failure to activate the chain of command may be related to neonatal injury. For example, in Karney v. Arnot-Ogden (1998, N.Y. App. Div. 3 Dept. 251 A. D. 2d 780), the registered nurse failed to tell the physician about preterm contractions at 28 weeks of gestation that were getting stronger until 2 1/2 hours had passed. The preterm fetus was born neurologically impaired.

In *Landry v. Clement* (1998, La. App. Cir. 711 So. 2d 829), decelerations of the fetal heart rate were not reported to the physician, and no nurse had been trained or completed a test in fetal heart monitoring. The fetus was stillborn. In *Howerton v. Mary Immaculate Hospital* (2002, 264 Va. 272 563 S.E. 2d 671), the nurse failed to inform the physician of the patient's condition in a timely manner. The nurse waited 25 minutes to report new, different, deep, sharp, knife-like pain. She also waited 7 to 8 minutes to report (terminal) fetal bradycardia in the 60 to 70 beats-per-minute range (see Figure 1 for an example of terminal bradycardia). In *Hiatt v. Groce* (1974, 215 Kan. 14 523 P2d 320), the nurse was negligent when she refused to call the physician, even when she was asked to do so multiple times by the patient. The failure to notify the physician that delivery was imminent resulted in an unattended birth and vaginal and labial lacerations.

Figure 1. Terminal Bradycardia.

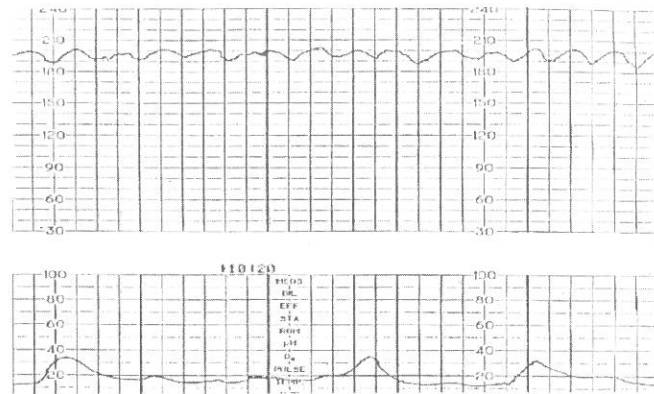


Inadequate Fetal Monitoring

Fetal monitoring is the most common procedure in labor and delivery. Oxytocin (Pitocin) is the most common drug administered to patients in that setting. Contractions decrease oxygen delivery to the fetus. Pitocin can increase the number and strength of contractions, further decreasing oxygen delivery to the fetus. Changes in the fetal heart rate pattern are interpreted as they relate to fetal oxygenation. Some changes are related to hypoxia, acidosis, and even asphyxia (Murray, 2007).

One pattern related to hypoxia, acidosis, and asphyxia is a sinusoidal pattern (see Figure 2). In *Cruz v. Northeastern Hospital* (2002 Pa. Super. 801 A. 2d 602), negligence was established when the registered nurse failed to tell the physician of the presence of a sinusoidal pattern and decelerations on the fetal monitor tracing. Experts testified that this contributed to the infant being born with severe neurologic deficits.

Figure 2. Sinusoidal Pattern.



Supervision of Nurses

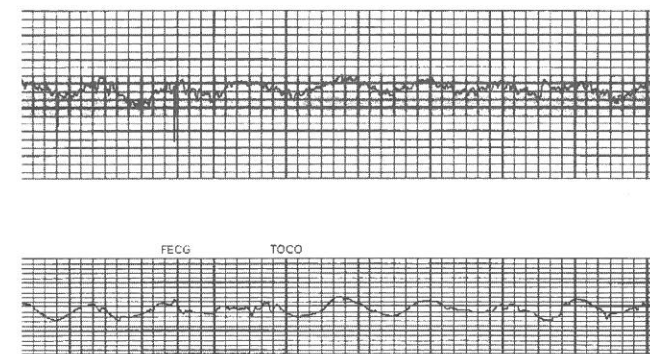
In *St. Paul Medical Center v. Cecil* (1992, Tx. App.-Dallas 842 S. W. 2d 808), the hospital was negligent in their supervision and assignment of a nurse who was rated by the hospital as unsatisfactory. She fell asleep at times while on duty, had trouble using fetal monitors, and was reluctant to get help from her supervisors concerning problems in labor and delivery. The negligence of the hospital and the nurse in failing to appropriately monitor and detect "fetal distress" caused a delay to deliver and the infant's neurologic injuries.

Physician Unavailable or Delayed

Figure 3 is an example of part of the fetal monitor tracing related to a case filed in the circuit court of Jasper County, Missouri. In that example, contractions are occurring every minute with less than 10 seconds of rest between them. To fully recover the oxygen supply, there should be 1 1/2 minutes from the end of one contraction to the beginning of the next contraction (McNamara & Johnson, 1995).

At the time this tracing was obtained, the maternal blood pressure was 165/72, the maternal heart rate was 94 bpm, Pitocin was infusing at 10 mU/minute, the cervix was dilated 8 to 9 centimeters, 100% effaced, with the fetus at 0 station and an occiput posterior position. There was meconium in the amniotic fluid. Plaintiff experts found that the Pitocin was not discontinued in a timely manner, oxygen was not given to the mother, and the physician was not notified of the nonreassuring pattern. He was not at the bedside until 1 hour and 20 minutes after this pattern, which worsened. Today the child has cerebral palsy. The case settled for an undisclosed amount prior to trial.

Figure 3. Uterine Hyperstimulation (lower channel) and Late Decelerations (upper channel).



Staff Competency

Labor and delivery nurses must have the skill to properly interpret and respond to the tracing of the fetal heart rate and uterine activity. In *Landry v. Clement* (1998 La. App. 3 Cir. 711 So. 2d 829), the hospital was partially liable when none of the nurses caring for the patient who was receiving Pitocin had received training or completed a test in fetal heart monitoring. The fetus was stillborn. In *Morrell v. Finke* (2005 Tex. App.-Ft. Worth 184 S. W. 3d 257), nurses failed to adequately monitor the fetal condition during labor and intervene for "fetal distress," which was a partial cause of the child's cerebral palsy.

The Orientation and Training Process

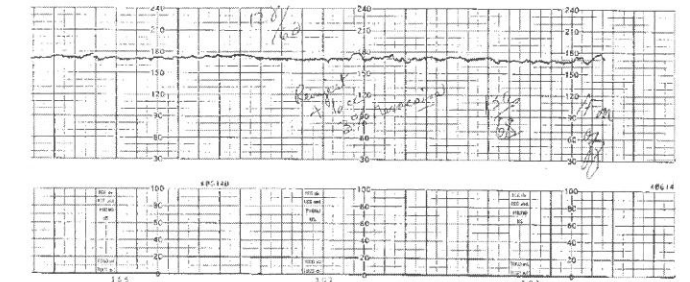
Labor and delivery nurses need to be taught how often to assess and record the fetal heart rate and uterine activity. The practice of labor and delivery nursing should be congruent with hospital protocol, policies, procedures, national organizational literature, and research evidence. Publications of the American College of Obstetricians and Gynecologists (ACOG) and AWHONN suggest that labor and delivery nurses should assess and record the FHR at defined intervals.

In *Marcano Rivera v. Turabo Medical Center Partnership* (2005 1st Cir. 415 F. 3d. 162), nurses caring for a woman who was induced with Cytotec and Pitocin charted the fetal heart rate every 30 minutes instead of every 15 minutes during active labor plus 5 1/2 hours of the tracing was missing. There was a question as to whether or not inadequate monitoring deprived the physician of an opportunity to intervene sooner, which contributed to fetal injury. In *Reese v. Fort Worth Osteopathic Hospital* (2002 Tex. App.-Fort Worth 87 S. W. 3d 203), the nurses failed to maintain a continuous fetal heart rate tracing. The failure to maintain the tracing was the partial cause of the delay to perform a Cesarean section and the fetus was stillborn.

Labor and delivery nurses need to recognize normal and abnormal labor progress. In prolonged labors with ruptured membranes and multiple vaginal examinations, there is an increased risk of a fetal and maternal infection. It is the nursing

duty to monitor maternal vital signs. The maternal pulse and temperature are elevated in the presence of chorioamnionitis, an infection of the chorion and amnion. Chorioamnionitis is also associated with fetal tachycardia, a rate above 160 beats per minute that is usually sustained for 10 or more minutes (see Figure 4). In *Cruz v. Northeastern Hospital* (2002 Pa. Super. 801 A. 2d 602), the nurse failed to retake the patient's temperature after finding it to be 102.1 degrees Fahrenheit. The infection was thought to be a partial cause of the baby's neurologic deficits.

Figure 4. Fetal Tachycardia.



Labor and delivery nurses need formal education to be able to properly interpret fetal heart rate and uterine activity patterns produced by the electronic fetal monitor. Failure to properly interpret and communicate abnormalities has been related to lawsuits. For example, in *Miles v. Box Butte County* (1992 241 Neb. 588 489 N. W. 2d 829), there was evidence that the nurses misinterpreted the fetal heart rate pattern which adversely affected the physician's care and resulted in the child's cerebral palsy. In that case, the tracing had late decelerations and variable decelerations with a late component (slow recovery) (see Figure 5). The physician testified that, had the nurse given him an accurate description of the tracing, he would have arranged for an earlier Cesarean section.

Figure 5. Variable Decelerations with a Late Component (slow recovery).

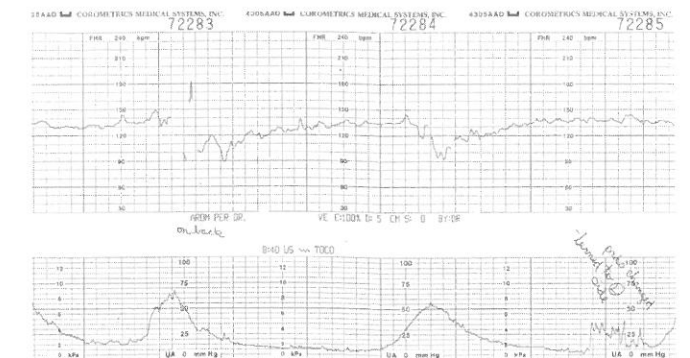
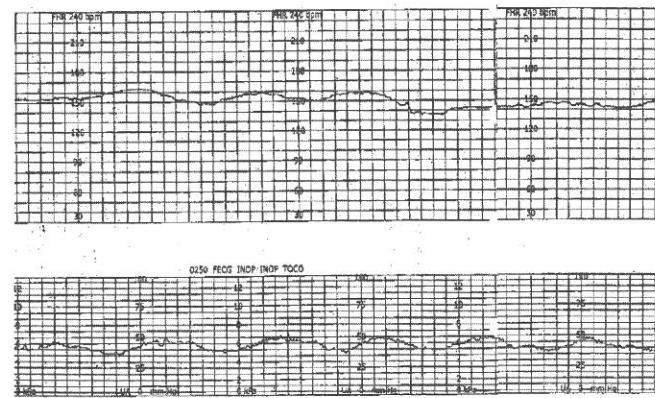
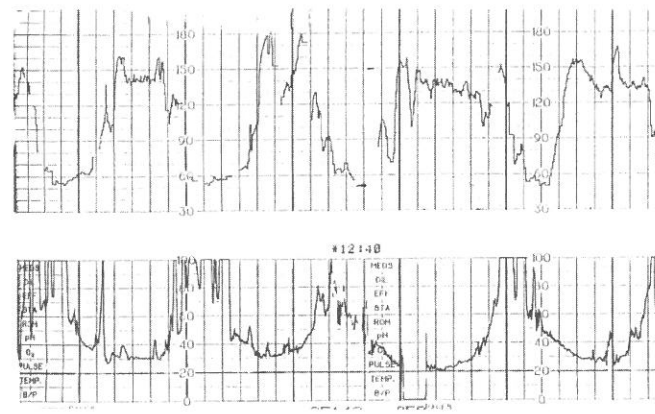


Figure 6. Late Decelerations with Absent Variability and Uterine Hyperstimulation.



In *Conerly v. State* (1997 La. App. 2 Cir. 690 So. 2d 980), a failure to properly monitor the fetus overnight and to recognize “fetal distress” contributed to the delay to deliver the baby. The baby was born with severe neurologic impairment and died 5 years later. In *Fairfax Hospital System Inc. v. McCarty* (1992 244 Va. 28 419 S. E. 2d 621), the nurses failed to recognize severe variable decelerations with contractions during pushing (see Figure 7). They failed to communicate the abnormal pattern to the physician. The newborn was neurologically injured.

Figure 7. Severe Variable Decelerations During Contractions and Pushing.

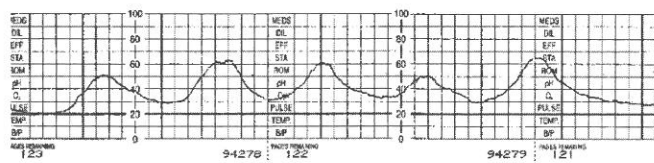
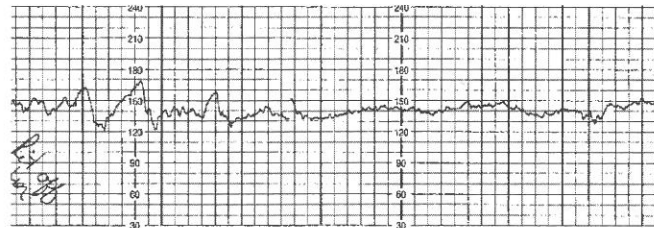


Once the nurse recognizes the fetal need for oxygen, in utero resuscitation measures should be undertaken. The failure to respond to the fetal need for oxygen has resulted in litigation. In *Baptist Medical Center Montclair v. Wilson* (1993 Ala. 618 So. 2d 1335), the nurse failed to 1.) determine that the fetus was breech; 2.) accurately determine the dilatation of the cervix; and 3.) respond appropriately to “fetal distress.” The nurse was found to be negligent when she failed to apply oxygen to the laboring woman during fetal bradycardia, and there was a claim that her negligence contributed to the baby’s neurologic injuries. In *Morrell v. Finke* (2005 Tex. App.-Fort Worth 184 S. W. 3d 257), the nurses failed to recognize and treat “fetal distress” and prepare the patient for a timely Cesarean section that contributed to the child’s permanent neurologic injury.

Oxytocin-Related Litigation

The most common drug administered by labor and delivery nurses is oxytocin (Pitocin). Uterine hyperstimulation is a side effect of the drug that can significantly deprive the fetus of oxygen (see Figure 8).

Figure 8. Uterine hyperstimulation.



Note the nurse appropriately discontinued the Pitocin infusion (“Pit off”).

Pitocin has been associated with fetal and maternal injury. For example, in *Vialva v. City of New York* (1986 N. Y. App. Div. 2 Dept. 118 A. D. 2d 701), there was inadequate monitoring of the patient on Pitocin during the time when her contractions were most frequent and intense. The woman had a uterine rupture, suffered from an amniotic fluid embolus, and died. In *Yang v. Stafford* (1988 Ind. App. 515 N. E. 2d 1157), the nurse increased the Pitocin beyond the hospital protocol when there was uterine hyperstimulation. The woman had a uterine rupture and hysterectomy.

In *Baptist Medical Center v. Wilson* (1993 Ala. 618 So. 2d 1335), the nurse failed to detect and report signs of uterine rupture when there was vaginal bleeding and the patient reported she felt as though her stomach had ripped open and the baby had moved up towards the ceiling. In *Vialva v. NY* (1986 N. Y. App. Div. 2 Dept. 118 A. D. 2d 701), the nurse administered Pitocin when the fetal head was unengaged in the pelvis. The nurses’ notes did not state how much Pitocin was administered, and the patient died from an amniotic fluid embolus caused by a uterine rupture. In *Howerton v. Mary Immaculate Hospital* (2002 264 Va. 272 563 S. E. 2d 671), the nurses were negligent in their care of the patient when they did not respond to the patient who was receiving Pitocin and who complained of new and different deep, sharp, and knife-like pain for 17 minutes. They didn’t tell the physician about her pain for 25 minutes. In this case, the uterus ruptured in three places.

In *Stack v. Wapner* (1976 Pa. Super. 244 Pa. Super. 278, 368 A. 2d 292), there was a failure to monitor the fetus and contractions and the uterus ruptured. There was a claim of negligent Pitocin administration, a postpartum hemorrhage, total hysterectomy, blood transfusions, hepatitis, and

administration of a medication resulting in hearing loss. The jury assumed an overdose of Pitocin was administered.

In *Ewing v. Aubert* (1988 La. App. 1 Cir. 532 So. 2d 876), the court found that there was not enough evidence in the case to prove that the nurse’s actions caused the patient’s uterine rupture. It did, however, express concern over the failure of the nurse to take frequent vital signs after the placement of the epidural, and the failure to chart the fetal station (descent) or the increase of the Pitocin infusion when the patient was contracting regularly and effectively.

Delay to Perform a Cesarean Section

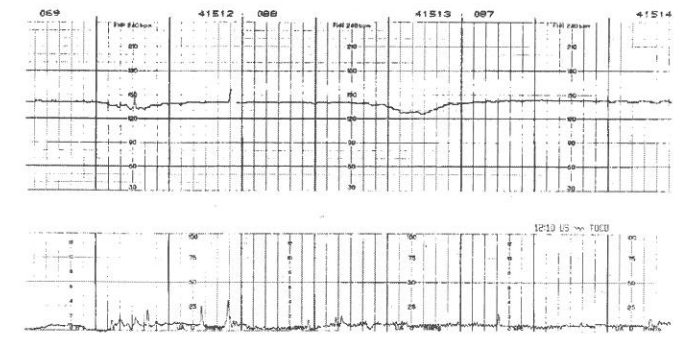
Labor and delivery nurses need to vigilantly monitor fetal and maternal status and be able to recognize the need for a prompt Cesarean section, mobilize the operating room crew, and expedite delivery based on fetal and/or maternal needs. In *Northern Trust Co. v. University of Chicago Hospitals and Clinics* (2004 Ill. App. 1 Dist. 355 Ill. App. 3d 230), there was a failure to have an available operating room for a Cesarean section that contributed to a delay, which resulted in a child’s neurologic injury. In *Gong v. Gjoni* (2002 N. Y. App. Div. 3 Dept. 294 A. D. 2d 648), there was a question of whether the nurse was negligent in not calling an anesthesiologist sooner, causing a delay in the Cesarean section, and causing injury to the baby.

In *McLeod v. Mt. Sinai Medical Center* (2006 111 Ohio St. 3d 1410, 854 N. E. 2d 1090), nurses failed to expedite an urgent Cesarean section, which contributed to the child’s cerebral palsy. In that case, the Cesarean section was performed 2 hours after finding “fetal distress.” The baby had intrauterine growth restriction (IUGR).

In *Conerly v. State* (1997 La. App. 2 Cir. 690 So. 2d 980), there was a claim the nurses and doctors delayed a Cesarean section once “fetal distress” was diagnosed during a contraction stress test (antepartal monitoring). The Cesarean section was not performed until 2 hours had passed. Even though there was no fetal bradycardia, the jury found that the Cesarean section should have been performed earlier. There were occasional variable decelerations and spontaneous decelerations through the night, one or two late decelerations during the night, and a decreased level of amniotic fluid (see Figure 9).

In *Northern Trust Co. v. University of Chicago Hospitals and Clinics* (2004 Ill. App. 1 Dist. 355 Ill. App. 3d 230, 821 N. E. 2d 757), there was a claim that there was a delay to apply the fetal monitor. A physician expert testified that it was the nurse’s duty, based on the presence of meconium, to attach the monitor within 10 minutes of arrival. It was applied 30 minutes after the patient arrived on the unit. In addition, there was a claim that the nurse did not recognize the need for prompt delivery, which contributed to the child’s mental retardation. An expert testified the Cesarean section should have been performed 30 minutes after the decision to operate but it was done 37 minutes after the decision because of the lack of an open operating room.

Figure 9. Spontaneous Decelerations.



Note that there are no contractions.

Conclusion

A healthy and safe labor and delivery experience is the goal of all labor and delivery nurses. The JCAHO identified several root causes of perinatal injury and death based on 47 cases they studied. While they did not specifically identify Pitocin-related negligence or a delay to perform a Cesarean section as a cause of injury, these are common themes in litigation related to perinatal morbidity and mortality.

Reference

- Association of Women’s Health, Obstetrics and Neonatal Nursing. (2003). *Fetal heart rate monitoring principles and practices*. (3rd ed.). Washington, DC: author.
- Baptist Medical Center Montclair v. Wilson, 618 So.2d 1335 (Ala. 1993).
- Conerly v. State, 690 So.2d 980 (La. App. 2 Cir. 1997).
- Cruz v. Northeastern Hospital, 801 A.2d 602 (Pa. Super. 2002).
- Ewing v. Aubert, 532 So.2d 876 (La. App. 1 Cir. 1988).
- Fairfax Hospital System v. McCarty, 244 Va. 28, 419 S.E.2d 621 (1992).
- Gong v. Gjoni, 294 A.D.2d 648 (N.Y. App. Div. 3 Dept. 2002).
- Hiatt v. Groce, 215 Kan. 14, 523 P.2d 320 (1974).
- Howerton v. Mary Immaculate Hospital, Inc., 264 Va. 272, 563 S.E.2d 671 (2002).
- Karney v. Arnot-Ogden Memorial Hospital, 251 A.D.2d 780 (N.Y. App. Div. 3 Dept. 1998).
- Landry v. Clement, 711 So.2d 829 (La. App. 3 Cir. 1998).
- McNamara, H. & Johnson, N. (1995). The effect of uterine contractions on fetal oxygen saturation. *British Journal of Obstetrics and Gynaecology*, 102(8), 644-647.
- Marcano Rivera v. Turabo Medical Center Partnership, 415 F.3d 162 (1st Cir. 2005).
- McLeod v. Mt. Sinai Medical Center, 111 Ohio St.3d 1410, 854 N.E. 2d 1090 (2006).
- Miles v. Box Butte County, 241 Neb. 588, 489 N.W.2d 829 (1992).
- Morrell v. Finke, 184 S.W.3d 257 (Tex. App.-Fort Worth 2005).
- Murray, M. L. (2007). *Antepartal and intrapartal fetal monitoring*. (3rd ed.). NY: Springer Publishing Company.
- Northern Trust Company v. University of Chicago Hospitals and Clinics, 355 Ill.App.3d 230, 821 N.E.2d 757 (Ill. App. 1 Dist. 2004).
- Reese v. Fort Worth Osteopathic Hospital, 87 S.W.3d 203 (Tex. App.-Fort Worth 2002).
- Sentinel event alert. Issue 30. (July 21, 2004). The Joint Commission on Accreditation of Healthcare Organizations in *Advances in Neonatal Care* (August 2004), 4(4), 179-181.
- St. Paul Medical Center v. Cecil, 842 S.W.2d 808 (Tx. App.-Dallas 1992).

Seef v. Ingalls Memorial Hospital, 311 Ill.App.3d 7, 724 N.E.2d 115 (Ill. App. 1 Dist. 1999).
 Stack v. Wapner, 244 Pa.Super. 278, 368 A.2d 292 (Pa. Super 1976).
 Vialva v. City of New York, 118 A.D.2d 701 (N.Y. App. Div. 2 Dept. 1986).
 Yang v. Stafford, 515 N.E.2d 1157 (Ind. App. 1988).

Michelle L. Murray, PhD RNC, has been a nurse for more than 30 years, spending her clinical time in a LDRP or labor and delivery setting as both a staff nurse and clinical nurse specialist. For more than 20 years, she has taught nurses from every state and in five Canadian cities. Internationally recognized for her expertise in fetal monitoring, Murray is the author of two books on fetal monitoring (*Antepartal and Intrapartal Fetal Monitoring* and *Essentials of Fetal Monitoring*), as well as book chapters published in AWHONN's *Liability Issues in Perinatal Nursing* and Futura's *Risk Management Techniques in Perinatal and Neonatal Practice*. She has designed and produced a state of the art CD-ROM on fetal monitoring, and has published articles in *JOGNN*, *MCN*, the *Journal of Perinatology*, *Nursing Management*, and the *Journal of Nursing Care Quality*. She can be reached at Mishalea@aol.com.

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References & Resources

Links for Social Security Disability

Kara DiCecco, MSN RN LNCC

The references presented here are meant to provide sample forms and information for the LNC interested in learning more about Social Security Disability claims. They are not offered as the definitive source of practice tools; as with any online resource, you must obtain copyright permission from the work's creator to duplicate in any form. The reader is also reminded to consult current case law, legislative reform, and, where appropriate, attorney guidance in contrast to relying solely on this information. Readers are cautioned to evaluate Web sites independently for their reliability.

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An informational source, this link is hosted by Traver & Traver, S.C. who represent Social Security Disability claimants in Federal Court.	www.ssaconnect.com
The following links provide a small sampling of Residual Functional Capacity (RFC) Questionnaires. Although SSA evaluates the claimants disability in the context of the limitations of the whole person, RFCs are sometimes completed by a specialist focusing on a specific medical or psychiatric condition. This link from Byron Lassiter & Associates (representing Social Security Disability claimants in the Mobile, Alabama and Pensacola, Florida areas) provides a sample of a Physical RFC Questionnaire. This non-profit, support group, PBCers.org provides a sample of an RFC specific to the diagnosis of Primary Biliary Cirrhosis. This link provides another style of RFC unique to sleep disorders.	www.byronlassiter.com/pdf/rfc.pdf http://pbcers.org/rfcq.htm www.talkabouteleep.com/sleep-disorders/archives/medicare_disability_questionnaire.htm
The SSA's "GRID" is a concept unique to evaluating the individual claim in determining entitlement to Social Security Disability. This reference is provided by Kazmierczak & Kazmierczak, a firm with offices in the New York and New Jersey areas focusing on Social Security Disability.	www.ultimatedisabilityguide.com/grid_rules.html
At the generosity of Daley, DeBofsky & Bryant in Chicago (with an additional office in Hawaii), this Web site provides a multitude of resources related to the SSA claim. This firm specializes in both Social Security Disability and Employment Rights.	www.severe.net/
The Department of Labor/ Office of Administrative Law Judges website provides an exceptional resource for learning the essentials of the Dictionary of Occupational Titles (DOT) and its offspring, O*Net. To understand how the Vocational Expert (VE) will evaluate a claimant's ability to return to the workforce, you must familiarize yourself with this resource.	www.oalj.dol.gov/LIBDOT.HTM Choose definitions > scroll to bottom > Appendix C, components of the definition trailer will help you understand how the VE evaluates job placement.
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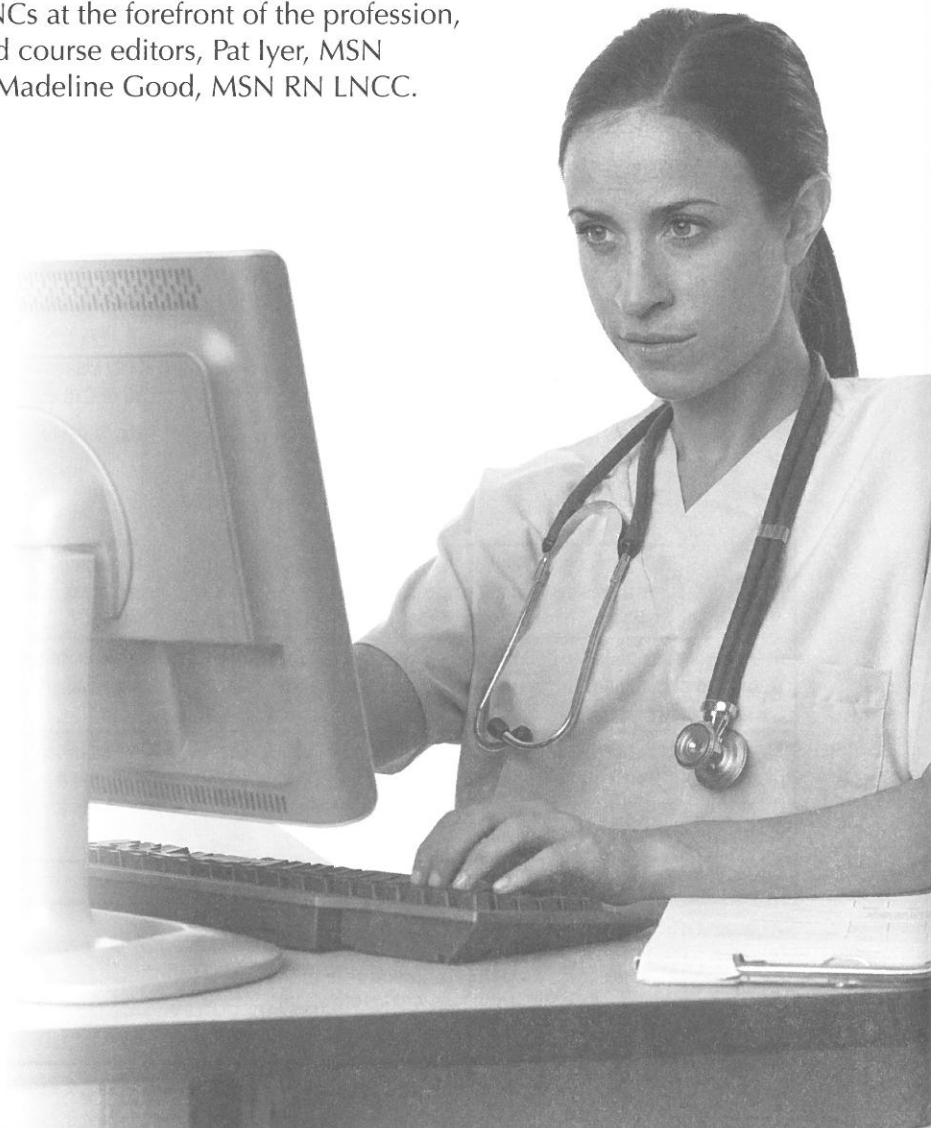
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Questions & Answers

Independent vs. In-House LNC Work

Rhonda L. Newberry, RN CCRN CLNC, Paralegal

Q: I've finished my training to be a legal nurse consultant (LNC). Now what? What is the difference between being an independent consultant and working in-house, and which do I choose?

A: The opportunities for LNCs are endless, in both independent and in-house roles

I often hear this question regarding the difference between roles as I sit in the monthly general member meetings. As a relatively new LNC myself, I decided to do a little investigation to help me decide which path best suits my needs. Both roles require that you educate the attorney on what you have to offer and how your participation can impact his or her case. Sometimes this requires that you think "out of the box."

Independent

Many LNCs are independent consultants. This allows them the freedom of being their own boss and adjusting their schedules to meet their needs. They are confident in their medical expertise and able to market these skills in the legal arena. This means that they have to constantly re-evaluate their marketing plan to determine what is or isn't working and make necessary changes. You are not only selling your LNC services, but also projecting your professionalism. In today's world of tort reform, this is an increasing challenge because attorneys have more limited financial resources to draw upon in litigating their cases.

Remember to think creatively. Evaluate other areas in which to utilize your skills, such as designing demonstrative evidence for other LNCs or attorneys. If research is your forte, consider marketing your services as a researcher. Again, the choices are only limited by your creativity and imagination. Find an untapped need and expound on it.

When formulating a fee schedule, it is important to bill sufficiently to cover the cost of doing business, including self employment tax, business and liability insurance (see the Q&A column Malpractice Insurance for the LNC in the Summer 2007 JLNC), office and overhead expenses, as well as the cost of a benefit package that you may have had when working as a clinical nurse. LNCs do not routinely discuss what they charge because this can be construed as a violation of antitrust laws (see the Point of Law column Innocence Lost: Could This Be Price Fixing? in the Fall 2006 JLNC); however, archives of past surveys are available on the AALNC Web site at www.aalnc.org/images/pdfs/SalaryData.pdf.

The successful independent LNC is self-directed, motivated, and well-organized. It is your responsibility to keep financial records for tax purposes and billing of your services. Keep in mind that you are also responsible for the cost of seminars, advanced degrees/education, and any CEUs that you need to maintain your current certifications. This is where a certified public accountant is an invaluable asset to assist you in making business choices.

The independent LNC must develop a system for checking conflict of interest, abiding by the ethical constraints of the legal profession. This can be done by keeping a secure record of attorneys and attorney-clients, and cross-referencing these when taking on a new case. If you find that you may have an actual or potential conflict immediately, alert the attorney to make him or her aware of the nature of the conflict. The conflict may be past representation, in which case it may be necessary to disclose all pertinent non-privileged facts necessary for the potential client to make an informed decision as to whether to waive the conflict. Some conflicts may be waived depending on the circumstance; however, violation of ethical rules may persist. Hiring your own attorney on retainer is also invaluable to oversee your contracts and assist with any legal problems or questions that may arise.

In-House

The in-house LNC role varies greatly depending on the size of the firm, the nature of the work, and the law firm's familiarity with the LNC role. In a larger law firm, you may have less direct contact with the attorneys and more with the support staff such as the legal secretaries and paralegals. The role also differs in a defense firm versus plaintiff firm. In the defense firm, the insurance company may be the guiding entity, whereas in the plaintiff firm, the attorney is the guiding entity and the ability to recoup expenses is the guiding factor.

In legal firms that have limited experience with LNCs, the onus is on you to educate the attorney as to the value of your role as an LNC in the litigation process. Although this seems somewhat daunting, remember that you have spent your previous nursing career establishing your worth as

a professional within the medical field; utilize this expertise with the legal staff. The established firms are already aware of the role of the LNC and are usually open to suggestions and insights. An LNC joining a firm with an established LNC has the advantage of being mentored as to the firm's belief, standard, and expectations (culture). In both situations, however, the LNC role is an evolving one.

The in-house LNC benefits from a constant income with job security dependent upon your performance and the firm's ability to maintain a caseload. Some firms also offer wardrobe allowances and year-end bonuses. The in-house role also benefits from frequent contact with the attorneys and regular discussions of the procedural status of cases, case strategy, and legal standards, allowing the LNC to evaluate and analyze medical issues in relation to legal standards. In essence, not only is the attorney learning from you, you are also learning from the attorney.

When evaluating an in-house position, consider all aspects, including the type of cases the firm handles, size and culture of firm, salary, and benefit packages. The position should be compatible with your goals, philosophy, and expectations. While the job security is a plus, the lack of flexibility regarding time might not fit your work style.

Learn from Others

Networking is invaluable to the LNC to discuss important factors of employment and business, for both the independent and the in-house LNC. Professional organizations such as AALNC can provide members with the most up-to-date topics affecting LNCs today. Attending conferences and lectures not only assists you in furthering your professional development, but also establishes a network for mutual support and camaraderie while promoting standards of excellence within the profession.

Whether you are an in-house LNC or an independent LNC, there are advantages and challenges. Not mentioned here are the variations of each role. Some LNCs work part-time at both simultaneously. Others are employed by a firm but are allowed to work from home. Another option gaining popularity is the concept of a strategic partnership or collaborative practice, where the LNC remains independent but, by contractual agreement, discounts the hourly fee in exchange for a guaranteed number of hours per month.

Ultimately, the choice is yours. Taking the time to evaluate the pros and cons of the different settings and making a well-researched decision will assure you a rewarding career as an LNC.

Rhonda L. Newberry, RN CCRN CLNC, Paralegal, has been practicing as an independent legal nurse consultant since 2002. She has been an AALNC member since 2005, currently serving as Secretary-Elect for the Saint Louis Chapter. She remains clinically active and serves as an expert witness for Critical Care and Cardiology. She can be reached at Newberry01@charter.net.

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Book Review

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Reviewed by Beth C. Diehl-Svrjcek, MS RN CCRN NNP CCM LNCC

You may require an extra workout at the gym to cradle this book in your arms, but make no mistake: this "heavy-duty" text is well worth it! More than 1,400 pages strong, this book is an incredible compendium of vital information. Once again, the legal nurse community benefits from the incredible know-how of two well-seasoned LNCs and editors, Patricia Iyer and Barbara Levin. This text encompasses 45 chapters and the contributing authors read akin to a "Who's Who" in the medical-legal community.

In uniform fashion, this distinguished group of highly credentialed contributors imparts their knowledge in the most effectual manner. Accordingly, they represent clinical nurse experts, attorneys, economists, pharmacists, photographic illustrators, toxicologists, vocational rehabilitation consultants, emergency medicine technologists, nutritionists, and life care planners. The well-suited cliché that "the sum is only as great as its parts" applies to this text as the book not only has exceptional "parts" but the final "sum" is a cohesive masterpiece. Notably, this third edition reflects societal and historical changes in nursing and medicine that were not addressed in previous editions: the nursing shortage and permeating concerns regarding patient safety.

The book is divided into seven major parts that independently cover the essentials of all aspects of nursing malpractice. The parts are delineated as follows:

- Part I: Patient Safety
- Part II: Nursing Practice
- Part III: Common Areas of Nursing Liability
- Part IV: Advanced Roles
- Part V: Causes of Action
- Part VI: Damages
- Part VII: Litigation of Nursing Malpractice Claims

The book concludes with an extensive appendix of medical terminology, Internet resources, and a standard glossary. The description of prefixes, suffixes, and roots is a wonderful review for any LNC who may be struggling to understand a disease or condition that is not normally encountered in daily practice. The chapter format mirrors other texts that have been penned by these authors. Purposely, each chapter commences with a detailed synopsis referencing discussion points so that the reader may quickly seek desired information. Throughout each chapter, tables, figures, illustrations, and graphic templates of

documents serve as practical examples. The frequent "Tips" on virtually every page are effective anecdotes that bring forth salient pieces of information. Chapter endnotes provide the reader with an alternate listing of sources should they chose to explore the topic further.

Part I consists of five chapters that focus on patient safety. The discussion regarding the evolution of the nursing shortage with the circumstantial shift of nursing practice away from the traditional hospital setting enables the LNC to develop a deep understanding of the multiple aspects of nursing malpractice. Coupled with a review of the principles of risk management and their relationship to patient safety, this section serves as a primer into the root causes of nursing malpractice and patient injury.

Part II is a relatively abbreviated section of the book, consisting of four chapters that deal specifically with nursing practice issues. Fundamentally, the foundations of nursing practice are reviewed from a nursing education construct and expanded upon with material that intertwines the regulation of practice, certification, national standards of care, practice guidelines, and the all-important evidenced based nursing. Truly, this is the nuts and bolts of everyday practice. This content is further complimented by an introspective focus on the health care environment, which comprises health care delivery systems, job responsibilities, staffing issues, competencies, and the care continuum. Nursing documentation is detailed in chapter nine. For those of you familiar with the text *Medical Legal Aspects of Medical Records*, you will find many commonalities between that text and this concluding chapter. This section addresses nursing, as it exists in the here and now.

Part III, a 14-chapter section, deals with the clinical areas that are common origins for nursing liability. This section allows the experts to shine in terms of the depth and breadth of their clinical expertise and encapsulates distinct areas of specialty, e.g. obstetrics/neonatal/pediatrics, med-surg, critical care, psych, emergency room, long-term care, and managed care. If an LNC is already clinically experienced in one of these particular fields, it is likely that the information contained within the chapter will be reflective of their existing knowledge base; however, for those LNCs without clinical expertise in a designated clinical area, these chapters provide an excellent starting point to explore

pertinent definitions, clinical states, and disease processes, as well as patient care standards, treatment protocols, and concurrent documentation. The practicing LNC involved in the analysis of a potential medical malpractice action will benefit tremendously from these focused chapters, as they prepare case documents such as a statement of merit.

Advanced Practice Roles, specifically the nurse anesthetist and nurse midwife, are detailed in Part IV. Actually, all aspects of anesthesia administration are highlighted, so the chapter delves deeply into more than just the role of the nurse anesthetist. Given that the utilization of anesthesia in some form is involved in a multitude of clinical situations, the information is fundamental to understanding malpractice claims related to anesthesia. The same concept can be applied to the midwifery chapter. A great discussion of the origins and current state of midwifery ensues, but this chapter further expands on obstetrical practice. Although other advanced practice roles were eluded too in the clinically based chapters, other advanced practice roles, e.g. Neonatal Nurse Practitioner, Pediatric Nurse Practitioner, and Family Nurse Practitioner, were not discussed in this dedicated advanced practice section.

The reader may approach the reading of Part V: Causes of Action with some in trepidation. Somehow, a discussion of infections, wounds, health care fraud, medication errors, and nurses who kill doesn't make for a pleasant or easy read. Nonetheless, the reality is that the LNC may deal with some of these issues time and again, with the hopeful exception of the "nurses who kill" chapter. These clinical conditions or health care situations are capable of permeating all types of health care settings, specialty practice areas, and levels of personnel. So be prepared and arm yourself with the critical information contained within these pages. You will not regret the decision to do so.

As any LNC is acutely aware, damages coupled with causation is an essential element for any malpractice action. Within the four chapters of Part VI, "damage" theory is applied through a review of life care planning, vocational evaluations, the role of the forensic economist, and pain and suffering. With the presence of tort reform, grasping the content of this section becomes even more imperative. The professionals engaged by an attorney to draft the life care plan, determine vocational capabilities, economically analyze long term care issues, and ascertain the degree of a client's pain and suffering is pivotal if the malpractice action is to be evaluated in an unbiased manner. The content addressed in this section is highly practical and functional.

The concluding section of this book melds the litigation of nursing malpractice claims. This is the "how-to" manual for the LNC and an adjunct to the text *Legal Nurse Consulting: Principles and Practices*. Have your pencils ready because this step-by-step process allows LNCs to check off essential tasks as they are presented with a case, e.g. initial screening, attorney perspectives, expert witness issues, evidence formats, and trial techniques. As many LNCs know, if the initial steps of case research are done properly, it may result in dismissal

for lack of merit or an early settlement, which spares both parties emotional anguish, time, and expense.

Be strong and have those hand weights at the ready so that this "heavy-duty" text can become an integral part of your reference library. Regardless of whether you are a greenhorn novice or an expert LNC, this book provides the key to multifaceted issues surrounding and encapsulating nursing malpractice. Your practice will be enhanced within the realm of legal nurse consulting if you seize the moment to ingest the excellent content that rests between the bindings.

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LNC Technology

The Integrated Outsourcing Facility

Kara DiCecco, MSN RN LNCC

As clinical nurses, we are in our element to solve problems and function autonomously in the most intense situations. Under these conditions, we prioritize and multitask as if it were inherent to our genetic coding. As a result, it is sometimes difficult for us to step back and relinquish control to others. It is apparent, however, that in the legal field, the receptiveness to working with a specialized service and staying abreast of evolving technology serves makes the LNC's job easier.

With this observation in mind, a section of this issue of *The Journal of Legal Nurse Consulting* has been reserved to introduce the practicing LNC to a variety of cutting-edge technologies and specialized vendor services. This article will address the advantages of an integrated outsourcing facility.

As an in-house LNC in a plaintiff's firm, I frequently enlist the services of a vendor to assist me with a wide variety of demands. Within the confines of confidentiality, the day-to-day administrative needs of the client under legal representation are delegated to and overseen by a variety of professionals who dependably and efficiently perform their jobs. My job as an LNC with a practice focus on clients in the litigation stage tenuously balances the needs of preparing for trial with an eye toward cost-effectiveness and time-constraints. At this stage of legal representation, the competing details of trial morph into a dead heat race for the finish line. What might otherwise be a series of missed phone calls, traded voicemail messages, and delays in time-sensitive materials with possible exclusion from trial are proficiently and soundly addressed by a mélange of behind-the-scenes experts in an integrated outsourcing facility.

Outsourcing facilities are not unique to my geographic area in Delaware. Such facilities exist in all metropolitan areas, and as the trend toward outsourcing grows, so do the expectations of their client base. The movement toward increased outsourcing has likely led to each of us to first hand experience with the phenomenon. Worker's compensation claims are often administered by third-parties, medical facilities ship their bills overseas for processing, computers are returned to their home ports miles away for repair, and the structure of the banking industry has long used subcontracting to diversify its functions.

Using Integrated Outsourcing

Many years ago, when I was just beginning my LNC career, I only knew that couriers daily shuttled back and forth to clock-in court documents or hand-deliver important papers. As my experience grew, I was familiar with using the service to enlarge trial exhibits, reverse film negatives into positives, and obtain back-up discs of scanned documents or photos.

I incorrectly assumed that a facility of this type existed mainly to service the needs of firms dealing in intellectual property, corporate law, or bankruptcy, given the voluminous documents these firms handled. While the massive documents are proficiently handled by this type facility, the extent of their services is much more pervasive.

To get a better understanding of the services available, I spoke with Vito DiMaio, Vice-President of Parcels, Inc. This integrated-outsourcing service has offices located in Wilmington, Delaware, and Philadelphia, Pennsylvania. Parcels, Inc. has provided over 25 years of exceptional and reliable service in meeting the outsourcing needs of attorneys and their staff nationwide. (To find out more, visit their Web site at www.parcelsinc.com or e-mail DiMaio at vdimaio@parcelsinc.com.)

According to DiMaio, "An integrated outsourcing service offers in a single phone call the ability to orchestrate almost all your law practice and litigation needs. Services are provided 24 hours a day, 7 days a week. Using a facility with integrated services allows you to obtain multiple services with minimal effort. Such a facility understands the nature of the legal field and can handle impending deadlines reliably and efficiently and well as day-to-day operations. On the rare occasion the facility does not directly provide the needed service, the facility will act as a liaison for clients in arranging and securing the needed service."

Now a seasoned LNC, I considered myself fairly well-versed on what an integrated outsourcing service could offer... I was wrong. What follows is just a sampling of what an integrated outsourcing service may offer.

Document Technology Services	<ul style="list-style-type: none"> • Complex Litigation Management input and maintenance into various software systems such as Summation, Concordance, Opticon, IPRO, Trial Director, Sanction, Ringtail, etc. • File conversion • EDD/ESI processing • OCR, document coding • Database consulting • Software training • High-volume electronic filings • Virtual binders • Off-site storage • Document shredding.
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Videoconferencing Center	<ul style="list-style-type: none"> • Equipment such as LCD touch screen remote • Document camera • Internet access. • Dedicated conference coordinator to arrange in facility or on site court reporter, catering and courtesy shuttle with 24-hour, 7-day availability.
Copy Services	<ul style="list-style-type: none"> • Both low and high volume copies • Digital prints • Trial exhibits and enlargement, • Broadcast faxing, • Return notarized Affidavit of Service, • Mailings, • Court filings, hand-deliveries • FedEx Powership Processing, • Labeling, scanning, binding, laminating, • Marketing materials, • Newsletter editing and production.
Trial Support	<ul style="list-style-type: none"> • Transportation and setup of trial materials. • War room setup*. • Additional staffing. • Shuttle service to courthouse for the trial team and expert witnesses. • Food services and delivery. • Post trial pack up and shredding. • Information from public document on the jury pool (venire).
Document Search and Retrieval	<ul style="list-style-type: none"> • All Courts levels, UCC searches and corporate filings • Property searches • Mortgage and assignments searches • UCC, Federal and State Tax liens • Criminal investigation, • Motor vehicle, • Trade name search, • EPA/ERISA. • Deeds.
Secretary of State Services	<ul style="list-style-type: none"> • Corporate filings • Service of process • Registered Agent information, etc.
On-site Facilities Management	<ul style="list-style-type: none"> • Temporary or long-term staffing • Both on-site and network IT support • Software management • Administration functions such as supply management, mailroom and catering.

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*The War Room will be the topic of a future Tech Corner.

It is incumbent on LNC to familiarize themselves with the services of the outsourcing facilities in their geographic area before needing their services in trial. It is also a wise practice for the LNC to establish the dependability and reliability of the facility for special projects well in advance of an impending deadline such as arbitration or mediation. By requesting a fee schedule for services – and determining exactly what services the facility provides and under what time frame – the LNC is able to determine when the outsourcing service is an appropriate resource.

Be it the retrieval of the expert's medical literature or the design and enlargement of medical demonstratives, the savvy LNC will develop resources to sharpen the competitive edge in independent practice or further assert the LNC's value to the law firm.

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AMERICAN ASSOCIATION OF
LEGAL NURSE CONSULTANTS

The Journal of Legal Nurse Consulting

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Submission Guidelines

The Journal of Legal Nurse Consulting (JLNC), a refereed publication, is the official journal of the American Association of Legal Nurse Consultants (AALNC). The journal's purposes are to promote legal nurse consulting within the medical-legal community; to provide both the novice and the experienced legal nurse consultant (LNC) with a high-quality professional publication; and to teach and inform the LNC about clinical practice, current national legal issues, and professional development.

The journal accepts original articles, case studies, letters, and research studies. Query letters are welcomed but not required. A manuscript must be original and never before published, and it should be submitted for review with the understanding that it is not being submitted simultaneously to any other journal. Once submitted, articles are subject to peer review (publication is not guaranteed).

Manuscript format

Manuscripts should not exceed 3,000 words in length. The title page should include the title of the manuscript and the authors' names, credentials, work affiliations and addresses, daytime phone numbers, fax numbers, and e-mail addresses. One author should be designated as the corresponding author. The title page, the tables and figures, and the reference list should each appear on a separate page. Pages, beginning with the title page, should be numbered consecutively.

Manuscript submission

Manuscripts should be sent to the JLNC Managing Editor via e-mail at JLNC@aalnc.org, as a Microsoft Word attachment. (If not possible, an electronic copy on CD can be mailed to the JLNC Managing Editor; address above.) Use a minimum of formatting: do not use unusual fonts or a variety of type, and do not insert headers or footers except for page numbers. Create a separate file for tables and figures—do not insert them into the text file. Clearly label your e-mail (or CD) with the submission title, word processing program name and version, and name of the corresponding author.

Style and reference guidelines

JLNC follows the manuscript style and reference guidelines of the *Publication Manual of the American Psychological Association* (5th ed.). Legal citations must adhere to the guidelines published in *The Bluebook: A Uniform System of Citation* (15th ed.), Cambridge, MA: The Harvard Law Review Association.

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The author is responsible for obtaining permission for the use of photographs of identifiable persons.

Figures and tables

Figures include line drawings, diagrams, graphs, and photos. Tables show data in an orderly display of columns and rows to facilitate comparison. Each figure or table should be labeled sequentially (e.g., Figure 1, Figure 2 or Table 1, Table 2) and should correspond to its mention in the text. All photographs must be black-and-white electronic files.

Manuscript review process

Manuscript submissions are peer reviewed by professional LNCs with diverse professional backgrounds. First-time authors are encouraged to submit manuscripts. Manuscript assistance can be provided upon request to the editor.

Acceptance will be based on the importance of the material for the audience and the quality of the material. Final decisions about publication will be made by the editor.

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Manuscript checklist

Please use the checklist below to be sure that your submission follows JLNC guidelines.

- The manuscript is being submitted exclusively to the JLNC and has not been published previously.
- Guidelines in the *Publication Manual of the American Psychological Association* (5th ed.) and *The Bluebook: A Uniform System of Citation* (15th ed.) (for legal citations) have been followed.
- All references cited in the text are included in and agree with the reference list. References in the reference list appear in alphabetical order and include all the elements described in *Publication Manual of the American Psychological Association* (5th ed.).
- Permission for including or reproducing previously published information (e.g., tables and figures) is enclosed.
- Numbers and percentages have been checked against one another and the text for accuracy.
- Tables and figures reflect the information in the text.
- The manuscript does not exceed 3,000 words in length.
- The title page includes the title of the manuscript and the authors' names, credentials, work affiliations, addresses, daytime phone numbers, fax numbers, and e-mail addresses.
- Graphics are black-and-white electronic files.
- One author is designated as the corresponding author.

The Journal of Legal Nurse Consulting Topics Sought for Feature Articles

Damages/Life Care Planning

Calculating Damages for Pain and Suffering
Functional Capacity Assessment
Functional Testing: Approaches, Injury Management
Integration

Ethics

Mental Retardation and (Forced) Contraception
HIV Litigation: Medical-Legal Issues, Treatment
Frozen Embryos/Stem Cells
Sperm and Egg Banks: Issues in Liability
Wrongful Birth
Drug Testing: Workplace, Athletes, Medical-Legal/Ethical
Issues

Law

Qui Tam and Whistle-Blower Litigation
Expert Panels in Complex Medical-Legal Scientific Litigation
Biomaterials
Conflict of Interest

Criminal Law

Correctional Nursing
Death Investigation
Prescription Medications in Death Investigations
Sexual Assault Forensic Examination
Driving Hazards/Doctor's Liability: Diabetics,
Seizure, Alzheimer's
Insanity Defense
Shaken Baby Syndrome

Employment Law

Worker's Compensation Issues: Fraud, Representing
Undocumented Workers, Types of Injuries,
Malingering, Assessing Disability, AMA Guidelines,
Occupational Asthma

Medical Malpractice

Medication Co-prescriptions: Responsibility in Adverse
Reactions, Abuse
Medical-Legal Issues in Telemedicine/Teleradiology
Failure to Diagnose Breast Cancer: Liability, False-Negative
Mammograms
Dental Litigation: Temporomandibular Disorders
Missed Diagnosis of MI
Use of EKG and Cardiac Enzymes
Delayed Diagnosis/Treatment of Stroke, CVA: Heparin/TPA
Emergency Room Law

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Paramedic Litigation
Legal Considerations in Pre-hospital Care
Anesthesia Complications/Standards
Plastic Surgery: Complications, Liability, Plastic Surgeon vs.
Cosmetic Dermatologist
Avascular Necrosis: Complications, Liability, Malpractice,
Legal Outcomes
Pap Smears: Malpractice in Gynecology
Imaging Liability: Radiologists
Alternative Therapy and Malpractice: "Accepted Practice" vs.
"Reasonable Care"
Cruise Ship Medical Guidelines
Red Cross Issues and Liability

Obstetrical Malpractice

Nucleated Red Blood Cells: Timing of Brain Injury at Birth
Medical-Legal Aspects of Placental Pathology/ Examination
Vaginal Birth after Caesarean Birth: Standards
Contraception, Morning-After Pill
Infertility Practices
In-Utero Drug Exposure

Personal Injury

Carpal tunnel Litigation
Repetitive Stress Injuries

Psychiatric Issues

Malingering: What to Look For
Lack of Supervision and Liability: Suicide

Toxic Tort

Carbon Dioxide Poisoning
Mercury poisoning
Lead Poisoning

Miscellaneous

School Disability Litigation, IEPs
School Nurse Standards
Autopsy Findings/Terminology
Pharmacy Responsibilities for Patient Education, Informed
Consent
Legalization of Marijuana
Athletic Injuries: Medical-Legal and Malpractice Standards in
Treatment
Evaluation of Hearing Loss
Ambulatory Care/Outpatient Care Settings
Latex Gloves/Sensitivities
Fraud: Medical Bill Review



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