Business Principles for Legal Nurse Consultants

Edited by
Patricia W. Iyer
Jan Aken
Kathie W. Condon

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AMERICAN ASSOCIATION OF
LEGAL NURSE CONSULTANTS

CRC Taylor & Francis
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Foreword

The challenges of owning a business are many: developing a business plan; marketing services; astutely handling financing; buying the right software and hardware; hiring subcontractors and employees; developing and keeping strong relationships with clients; and avoiding ethical conflicts, to name a few. This text is designed to help legal nurse consultants with these challenges.

If you are considering starting a business, Chapter 1, "Getting Started," by Jenny Beerman and Lynda Watson, will help you sort through the issues involved in this huge step. You will find practical suggestions for marketing and advertising in the second chapter, written by Debra Summers. Teri Treiger, a Website expert and nurse, contributed valuable information for the chapter on Website development and maintenance. This chapter is loaded with practical information and resources. Pat Karalow, an expert at understanding the technology issues associated with LNC practice, shares her knowledge in "Technology and the Office."

Essential information for handling growth with the help of subcontractors and employees will help you avoid the pitfalls. Experienced LNCs Rose Clifford and Deborah D'Andrea poured their knowledge into two outstanding chapters. Pattie Patterson offers useful ideas on establishing strong billing and collections procedures needed to maintain cash flow. The tricky ethical minefield is carefully mapped out by Betty Joos in a chapter filled with examples specific to legal nurse consulting. Elena Capella's chapter on expanding and managing change will help you anticipate and face the inevitable changes in your business. Rob Morrison has assembled concrete suggestions for developing and strengthening relationships with attorneys. Lenora Smith's chapter is essential for LNCs functioning in the expert witness role.

The idea for this text developed out of an analysis of the existing products of the American Association of Licensed Nurse Consultants (AALNC). The AALNC Board of Directors identified the need to provide a text that would complement the *Legal Nurse Consulting: Principles and Practices*, Second Edition. The concept of a book that focused on the business aspects of the field was enthusiastically endorsed by the board when I presented them with an outline of chapters. After I accepted the responsibility for guiding this

book to completion, I knew that associate editors would be needed. Jan Aken and Kathie Condon ably provided the framework that enabled our vision to materialize. They eagerly learned the art and craft of editing.

We are indebted to our authors, who patiently incorporated the editors' comments into second and third drafts of their chapters. We are awed by their expertise and gratified by their willingness to help others learn from their experiences and knowledge. We offer this book to you, with our hopes that it will be a useful reference that will expand your horizons and help you with the challenges of being in business.

Patricia W. Iyer

Chief Editor

Chief Editor

Patricia Iyer, MSN, BSN, RN, LNCC, received her diploma in nursing from Muhlenberg Hospital School of Nursing in Plainfield, New Jersey, and her bachelor's and master's degrees in nursing from University of Pennsylvania. Iyer's career as an author began in 1980 with the publication of her first article. She has coauthored and edited many books for nurses and attorneys, including the second edition of *Legal Nurse Consulting: Principles and Practices*; *Nursing Malpractice*; *Medical-Legal Aspects of Pain and Suffering*; *Nursing Documentation*: *A Nursing Process Approach*; *Nursing Home Litigation*: *Investigation and Case Preparation*; and *Medical-Legal Aspects of Medical Records*, as well as several others. Her texts have been translated into Spanish, Portuguese, and Japanese and Indonesian languages. Iyer served on the Board of Directors of AALNC for 5 years, including 1 year as president. She is chair of the AALNC Education Task Force. Iyer owns Med League Support Services, Inc., which provides legal nurse consulting services to plaintiff and defense attorneys handling medical and nursing negligence claims, product liability, and personal injury, as well as criminal cases. She is a member of the Philadelphia and Morristown, New Jersey AALNC chapters.

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Kathie W. Condon, MSN, BSN, RN, received her associate degree in nursing from Mississippi Delta Community College at Morehead, Mississippi. She continued her education at the University of Alabama at Birmingham, where she received a BSN and an MSN. Condon has been an independent legal nurse consultant for 6 years, and is past president of the Greater Birmingham Alabama chapter of AALNC; and is currently serving as treasurer.

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injuries and illnesses. With more than 27 years in various medical settings, she has a wide variety of experience. She started her nursing career as an LPN, and received her associate degree in nursing from Regents College in Albany, New York. Patterson has written several articles in legal publications and has spoken on many topics related to the practice of legal nurse consulting as well as nursing issues. She continues to teach in the home health field when time allows and truly enjoys that aspect of nursing. Patterson is currently the president of the Central Virginia chapter of the AALNC and is also director at large for the LNC section of the West Virginia Bar Association. She is very active in AALNC on a national level as well. Patterson is editor and a founding member of a newsletter published for attorneys.

Lenora Smith, MSN, RN, is the sole proprietor of Carolina Nurse Consultants, a legal nurse consulting firm specializing in medical malpractice, personal injury, worker's compensation, and product liability. She has been a testifying witness in emergency and home health nursing cases. She is currently a case manager with a local hospital in North Carolina. Smith received her ADN degree from Davidson County Community College; her BSN with honors from the University of North Carolina at Greensboro; and her MSN with honors from the University of Phoenix. She is a founding member and past president of the Greater Charlotte chapter of the AALNC and in 2003 was elected to the nominating committee of the national organization. Smith is active in several nursing organizations, including the American Nurses Association, North Carolina Nurses Association, and Sigma Theta Tau National Nursing Honor Society, as well as the AALNC.

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Lynda Watson, BSN, RN, received her bachelor of science degree in nursing in 1978 from Marycrest College in Davenport, Iowa. She has been a critical care nurse for 26 years. She has been a member of the American Association of Critical Care Nurses for 25 years and retained CCRN certification for 18 years. Watson was a CPR instructor for 3 years and has been an ACLS instructor since 1996. She established her independent LNC business in 1998 in Kansas and has been a member of AALNC since 1999. She is a consulting expert and expert witness for defense and plaintiff attorneys. Watson's work has been published in the *Missouri Lawyer Weekly* and she is the author of a bimonthly newsletter.

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Getting Started as a Legal Nurse Consultant

1

JENNY BEERMAN AND LYNDA WATSON

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Introduction

Growing numbers of nurses desire to trade in their scrubs, stethoscopes, and 12-hour shifts for a new role that interfaces with the legal arena. In the past decade, many nursing publications and seminar brochures have contained advertisements that tempt nurses to try a new specialty of the nursing profession. These advertisements and brochures promise a career in which nurses can work from home, be independent, work full- or part-time, earn a much higher salary than that offered by hospitals, and own their own businesses.

Nursing is a traditional profession in which nurses fulfill their need or desire to help others, but often find themselves exhausted from long hours and overtime with no energy or time left for themselves or their families. Nurses are highly skilled, usually college educated, and highly knowledgeable in nursing and medical fields. Yet, nurses often perform repetitive tasks, and they are often penalized for creativity and choosing options other than the traditional policies and procedures. Nurses are educated to use critical thinking, act independently, and find creative solutions in a variety of health care settings, but are often stifled by lack of management support, staff, and resources. Therefore, they continue to take orders and follow policies and procedures developed by management personnel.

It is no small wonder that nurses are attracted to the field of legal nurse consulting, in which they can create their positions, develop niches, manage businesses, and be rewarded and appreciated for knowledge and hard work. This chapter explores ways to get started as a legal nurse consultant (LNC). The qualities of entrepreneurship, factors for personal and business success, structure and funding of a business, and location and positioning of the business are discussed.

Meeting of Two Professions

Nursing education generally culminates in an associate or baccalaureate degree. The knowledge base includes nursing; medicine; pharmacology; nutrition; anatomy; physiology; psychology; spiritual and holistic medicine; record keeping; and an understanding of physical, occupational, and respiratory therapy. Attorneys earn a law degree, but have little or no experience in nursing, medicine, or other areas of health care. Depending on their experience in medical-related legal cases, they need assistance understanding a medical record, standards of health care, medical and nursing literature, and healthcare policies and procedures. Armed with a strong educational and experiential background, the legal nurse consultant is positioned to make valuable contributions to the attorney's understanding of healthcare practices. The legal nurse consultant's role continues to expand in practice settings such as law firms; government offices; hospital risk management; medical care review; criminal investigation; and the insurance industry.

It is helpful to the nurse and potential attorney clients to be able to define the differences between a paralegal and an LNC. A paralegal is trained to assist the attorney by gathering and managing information and preparing legal cases for trial. For example, at the American Institute for Paralegal Studies, courses include classes in the court system; probate law; torts and personal injury; business law; family law; real estate law; criminal law; legal research and writing; dispute resolution; employment law; and ethics. Curriculum at other institutions is very similar and does not include medical terminology or other medical or nursing education. Although paralegals can read and organize medical records, they lack the educational background to interpret medical and nursing issues and standards of care.

A nurse is educated to provide health care according to standards of care while maintaining a complete and accurate record of the care provided. The nurse, therefore, can efficiently interpret and evaluate a medical record and do medical research to determine if that standard of care was met. The primary role of the legal nurse consultant is to evaluate, analyze, and render informed opinions on the delivery of health care and the resulting outcomes (AALNC 2002). Legal nurse consultants come from all areas of clinical experience and educational backgrounds, but certain commonalties prevail. The American Association of Legal Nurse Consultants' (AALNC) *Legal Nurse Consulting: Principles and Practice* text (Iyer 2003) lists activities that distinguish the practice of legal nurse consulting, such as:

- Facilitating communications and strategizing with the legal community for successful resolutions in healthcare-related litigation

- Educating attorneys and others involved in the legal process regarding the healthcare facts and issues of a case or a claim
- Researching and integrating healthcare and nursing literature with the healthcare facts and issues of a case or a claim
- Reviewing, summarizing, and analyzing medical records and other pertinent healthcare and legal documents and comparing and correlating them to the allegations; assisting issues of damages and causation relative to liability within the legal process
- Identifying, locating, evaluating, and conferring with expert witnesses
- Interviewing witnesses and parties pertinent to the healthcare issues in collaboration with legal professionals
- Drafting legal documents in medically related cases under the supervision of an attorney
- Developing collaborative case strategies with those practicing within the legal system
- Providing support during discovery, depositions, trial, and other legal proceedings
- Supporting the process of adjudication of legal claims

Employee to Entrepreneur

Career Shift

Nurses have many hidden resources that make them excellent candidates for starting a business: skills in leadership; problem solving; communication; documentation; research; teamwork; teaching; and public contact. Nursing is based on the process of collecting data; identifying problems; developing a plan; implementing the plan; evaluating the outcome; and revising the plan. This is the same basic process for developing a business plan. Nurses have ingenuity, determination, physical stamina, intuition, and a guiding principle to do well. However, a shift from employee to entrepreneur is, for many, a monumental change. If starting a legal nurse consulting business seems like a great idea, the question remains: is the nurse cut out to be an entrepreneur? Does the nurse have the ability, knowledge, and confidence to be an independent legal nurse consultant?

Definition of an Entrepreneur

"An entrepreneur is a person who organizes and manages an enterprise, especially a business, usually with considerable initiative and risk" (Wilson l994). Many of the attributes needed to be a successful entrepreneur are the same as those possessed by a successful nurse employee, e.g.

- Inquisitive — finds the cause of problems with delivery of care or equipment failure
- Visionary — seeks new ideas and products to affect patient care
- Communicator — talks with patients, doctors, management, and coworkers
- Educator — teaches patients, families, coworkers, and community
- Problem solver — finds solutions for system breakdowns, equipment failures, lack of supplies and personnel
- Organizer — manages the care of multiple patients, the complex care of one or two patients, or a group of other nurses
- Political savvy — deals with the structure of the facility, management, and policies that hamper patient care; uncooperative coworkers; difficult physicians; and staffing problems
- Salesperson — persuades hospital management to supply the means to provide proper nursing care; markets the nursing profession by providing good nursing care in a professional atmosphere
- Record keeper — maintains an accurate record of patient care, including charges for supplies and equipment

Pros and Cons

There are definitely pros and cons to starting a business. Many nurses start their legal nurse consulting business dreaming of riches and freedom. Although increased income is certainly possible, and the flexibility of hours is undoubtedly appealing, the nurse must understand the trade-offs to becoming an entrepreneur. All the annoying issues of being an employee are traded in for independence, creativity, opportunity, and power. However, the entrepreneur gives up regular paychecks and benefits for a sporadic and unpredictable paycheck and no benefits. A life of security, comfort, and regular schedules is traded for one of uncertainty and the responsibilities of owning a business.

Pros

Control and responsibility. In today's health care environment, the security of a position is never guaranteed. The possibility of a hospital merger or downsizing may occur at any time. The well-liked nurse manager, who understands scheduling needs of each individual nurse, can suddenly be eliminated with an organizational change. Shift length or times can be changed regardless of a nurse's opinion or needs. One advantage of starting a business is more control over the nurse's career path. With more control comes increased responsibility and a new set of demands, however. As the "boss," or legal nurse consultant, the buck stops here. The LNC must be sure that a lawyer

is satisfied with the work product; he or she is responsible for the success of the business and also reaps the rewards.

Money. Many nurses start their consulting business for the simple reason that they think they are worth more money than the hospital is willing to pay them as an employee. There is often a limit to how much money an employee can make. It is true that entrepreneurs encounter fewer limits and that these are usually self-imposed and can be overcome with time and determination. Independent legal nurse consultants charge more money per hour than the current nurse's wage. The potential income of the LNC depends on experience, geographical region, marketing skills, and demand for services.

Creativity and independence. Nurses often feel stagnant in traditional nursing roles such as hospital staff nurse. Most LNCs agree that starting a business is a creative and challenging endeavor. Running a successful consulting business requires the LNC to be a marketing wizard, salesperson, bookkeeper, secretary, and company president, all rolled into one. The freedom of owning a business means independent decisions. The LNC can choose to have few clients with steady work and limit the hours to a manageable level. However, if the LNC prefers a fast pace and the pressure of meeting deadlines, the workload is limited only by marketing skills and quality of work product. The area of expertise and other skills and talents will determine the nurse's niche in the legal arena. The business can be created as a specific service to a few attorneys or developed as a broad list of services marketable to multiple firms. The LNC may decide to hire other LNCs as subcontractors or employees as the business grows. Chapter 5, "Working with Subcontractors," and Chapter 6, "Working with Employees," address these methods of expanding the business.

Reward. In the clinical setting, the nurse's reward is the patient's improved condition or appreciation for good nursing care. In the legal arena, the nurse finds satisfaction in assisting those who have been harmed by the negligence of others in the areas of environmental toxins, drug investigations, class action suits, and mass tort litigation. It is rewarding for the legal nurse consultant when the attorney and the jury comprehend medical and nursing issues, technical procedures, and scientific research. It can also be very rewarding to defend the medical profession when it is not at fault. Nurses have seen clinical situations blown out of proportion into cases of malpractice. Legal nurse consultants can provide balance to this equation by recognizing fully defensible issues and assisting in the defense of non-negligent health care providers.

Cons

Uncertainty. Fear of the unknown is an obstacle to beginning a new venture. The hardest part of owning a business may be the uncertainty of not receiving

regular paychecks. Reviewing a case may take one day or several weeks. The attorney may promptly pay for the work product or take several weeks to months to pay. Without a consistently busy caseload, income is sporadic and unpredictable.

Marketing themselves is a new concept for most nurses. For many new entrepreneurs, developing a client base will be the most unfamiliar and difficult challenge of starting a business. Nurses are comfortable applying for a job with a healthcare facility, which defines what a nurse does. However, most nurses have never thought about selling their skills to someone who does not routinely employ nurses. Marketing is even more difficult when the new LNC is not sure what services he or she has to offer to the legal profession. Most experienced LNCs would tell a nurse that it is not wise to "quit the day job" until the business is well established.

The LNC should take the pulse of daily nursing practice to build and maintain credibility with the legal profession. It is important to stay current with standards, new techniques, drugs, and treatments, etc. in the area of specified expertise. Independent LNCs may stay current by continuing to hold full- or part-time clinical positions, teaching, reading journals, or publishing articles, along with attending conferences and retaining membership in professional nursing organizations. If expert witnessing is offered as a component of the business, it is imperative for the LNC to maintain an active clinical practice.

Risk. An entrepreneur is someone who is willing to take a risk with time and money. Is the willingness to take the risk a smart one? Will the LNC be able to attract clients and cases, and have the control, independence, money, and freedom desired? Fear of failure is another large obstacle. Although it is important to have confidence in the new venture, it is essential to have a back-up plan for income while becoming established — e.g., trying to secure a part-time or flexible schedule with a current employer. The decision must be made how to balance two careers or when to give up a regular job. Some nurses have the luxury of depending on a spouse's base income and benefits while getting started. Others need to develop steady clients and buy health insurance before taking the final leap. In the nursing world, per diem work is usually an option to supplement the income in slow times.

Lack of structure. Many people find security with structure in working for someone else. In the hospital setting, nurses know what is expected of them and how to care for their patients. Nurses who work for themselves have few guidelines. The assignments and variability of cases are very unpredictable. The LNC must be willing to perform unfamiliar tasks and do them well (e.g., sort and decipher hospital bills or find resources for an area of health care in which the nurse has no experience).

Lack of training. Though nursing knowledge is the basis for a legal nurse consulting business, most nurses feel that they need some sort of formal training before officially calling themselves legal nurse consultants. Many more options are available today than were on offer just a few years ago. One is to study Legal Nurse Consulting Principles and Practice (Iyer 2003), published by the American Association of Legal Nurse Consultants, and jump in with both feet. Those who feel that they need monitoring might combine or follow their independent study with a mentor as they start out in business. Several experienced LNCs provide home study or correspondence courses in the principles of consulting combined with mentoring.

Another alternative is to learn the principles of practice and start out as a subcontractor for an experienced LNC, while gradually building an independent practice. Varying in length from 6 days to several months, classroom courses are taught in various settings including private companies, organizations, and colleges.

Depending on the nurse's skills, there may be a need to learn or hire secretarial, computer, and business assistance. The LNC needs to produce many varied reports, charts, illustrations, and exhibits for case reviews, as well as to maintain required records of expenses, income, and taxes. A multitude of examples of these reports and forms is available from many different sources, including those who offer the courses described previously.

In summary, it is easy to become infatuated with the idea of owning and running a business. However, in order to be successful, the LNC needs to take emotion out of the equation and consider carefully the risks as well as the rewards of entrepreneurship to make an informed, intelligent, and calculated decision.

Qualities and Traits of the Entrepreneur

With the foundation of nursing education, training in legal nurse consulting skills, personal determination, and acquired and inborn entrepreneurial characteristics, the LNC will build a successful business. Some nurses have what it takes to start a business; others do not. Successful entrepreneurs exhibit several qualities that separate them from other people; these are discussed next.

Knowledgeable

The nurse possesses the knowledge that legal professionals lack and need. Most nurses take this knowledge for granted, not realizing that a medical record is to an attorney as a lengthy contract is to a nurse: "Greek." The nurse cannot interpret the legal terms in a warranty deed any better than

an attorney can define the medical terms in a patient's record. Each can understand the general idea of the document, but neither can explain how or why the details intertwine. In some states, the legal system requires expert testimony to defend or substantiate the allegations of negligent actions of a nurse in a lawsuit. A nurse who possesses the knowledge of the standard of care can provide this.

The LNC has the ability to collect, organize, and synthesize data in order to analyze medical records; pharmaceutical litigation; elder care issues; catastrophic injury; life-care planning; environmental toxin lawsuits; and Medicare or insurance billing fraud. The ability and knowledge of the LNC to review and understand each element of detail for its potential significance to a case is a valuable service to the attorney in understanding complex medical information.

Autonomous

The cornerstone of starting an exciting independent LNC business is the willingness to make decisions and choices. It is empowering to be able to set hours, choose an office location, determine the value of work product, and have the freedom of not conforming within a structured organization. It is exciting to control which new cases are accepted and when the work will be done. Autonomy allows the nurse to choose what type of practice setting is best, such as a behind-the-scenes consultant or an expert witness.

Determined

Building a successful LNC practice depends on ambition, energy, and a drive to make the change from nursing in a structured environment to creating and defining a business. When planning to start a business, a nurse must decide whether he or she has the determination and self-discipline to work alone. Keeping "the nose to the grindstone" by maximizing efficiencies will allow the LNC to see a task to completion. Determination will sustain the LNC when there may be little positive feedback after a case is completed or during long periods between case assignments. Determination to succeed in business will encourage optimism during down time so that tasks such as record keeping and marketing can be completed. Learning new skills or keeping current in the clinical setting can also be accomplished during slow times.

Honest

Being an entrepreneur is a long-term endeavor. Integrity will build relationships that will last a lifetime. Successfully assisting an attorney with a case maintains a relationship of trust. The attorney will then rely on the LNC to

provide sound nursing knowledge and guidance with the next assignment. Honest opinions about the merits of a case or the actions of a health care provider will stand the test of time and be the best source of referrals. Being truthful about a conflict in a case and referring it to a trusted colleague will build credibility. Honest business practices are essential in building and maintaining a good relationship. A reputation of integrity will enhance future business relationships and, over time, new referrals will stem from them.

Analytical

Reviewing medical records requires the LNC to be analytical. There must be a sharp focus on descriptions of injuries and events and details of documentation and timing, and a deep understanding of the standards of care. The LNC must analyze the information documented in the record. Often, that means analyzing what is not in the record by drawing on clinical experience to fill in the blanks and determine if the missing information influences the plaintiff allegations or defense strategies. Attorneys rely on the LNC to sift through a medical record to reconstruct a series of events, spot the missing records, and pull the record together for a complete picture of what may or may not have taken place. The LNC is valuable to the attorney in placing the data gathered from the medical records, depositions, and nursing and medical literature into a practical framework that will be utilized throughout the life of the case.

Resourceful

Resourcefulness implies understanding priorities and efficiency in meeting them (Schehrer 2002). Nurses practicing in the hospital are often faced with the wrong equipment, a unique wound, or an unusual drain that lacks all traditional methods of care requirements. Just as in the clinical setting, in which nurses are resourceful in finding a solution to meet the patient's needs, the LNC uses these same traits to find key information for the attorney. The attorney often knows the general issues of the case, but needs a "smoking gun" to prove or defend the case.

Identifying a key document, such as a PYXIS printout to prove what medications were used and when, could be the key to the case. The LNC is probably the only member of the litigation team aware that such a document is available. A review of the medical bill might validate how many narcotic doses were issued. Staffing records might be needed to substantiate a patient's claim of delayed care. This kind of resourcefulness makes the LNC invaluable to the attorney. It often takes an educated sleuth to determine which medical documents have the most impact on a case. Medical professionals are notorious for poor handwriting, but the LNC can decipher illegible phrases using

the context and location of the note. Key names might be identified because the LNC knows where to look in the record for a provider's documentation.

Reliable

The litigation process is full of dates, deadlines, and rules. A legal nurse consultant will develop a reputation built on the ability to assist the attorney to meet deadlines and follow the rules. The LNC must focus on the assigned task and work within the attorney's timeframe. Reliability is a cornerstone of the LNC business. An LNC who is dependable in meeting deadlines; reliable in gathering information regarding the issues of the case; and knowledgeable in educating the attorney and potential jurors will be valued by the attorney as a necessary part of the practice.

Communicative

Clear communication between the LNC and the attorney must occur during the legal process. Nurses speak the language of health care and lawyers speak the language of law. The successful LNC bridges that gap, interpreting medical terms, treatments, and standards so that the attorney understands the issues of a case. Just as important, though, is a clear description of the LNC's services and the case assignment. The consultant who keeps the client abreast of progress or delays and stays within the prestated time or dollar constraints will be rewarded with repeat business and referrals.

Detail Oriented

The attorney receives medical records that are disorganized, often incomplete, lengthy, or even altered. A legal nurse consultant makes sure that records are placed in the order best understood by the attorney or that best represents how the medical chart appeared when it was used by healthcare providers in the hospital setting. Organizing lengthy records of multiple care providers and hospitalizations can be tedious, but a thorough investigation cannot be completed until the medical records are in chronological order. Missing sections of a multipage flow sheet or Medication Administration Record (MAR) are often unnoticed by a layperson, but usually identified by the nurse, who is familiar with the forms and their use. The LNC will recognize orders that were not followed or verify that an assessment was done by finding documentation.

As each event and chart entry is reviewed, the important details of the case become apparent. Often the LNC finds the "needle in the haystack" that brings the issues of a case together. Identifying these key elements in a medical record is a valuable service for the attorney.

While attending an Insurance or Independent Medical Examination (IME) as an observer for the plaintiff, the LNC reports every detail that can

possibly be remembered to the attorney. These might include the doctor's method of assessment; each test performed; each question asked; tone of voice; and the client's facial expression or verbal response when pain was elicited.

In summary, foundations for success include personal attributes such as organization; dependability; positive personality; reliability; and knowledge as a nurse. Business attributes of the LNC include believing in self; being organized; being determined to be uniquely successful; and communicating accurately and succinctly in listening and in writing. Armed with nursing knowledge in combination with qualities and traits listed previously, the LNC can bridge the gap between practicing as a nurse and serving as a consultant to an attorney.

Structure of Business

Professional Help

It is hard to navigate the maze of tax and legal issues facing entrepreneurs without two key professionals: a lawyer and an accountant. An accountant who specializes in small business services is cost effective and a great asset to the LNC new to business accounting and tax structure. He or she can provide any level of service needed, from day-to-day posting of income and expenses to quarterly estimated tax filing and end of year taxes for the business. It would be wise to consult either or both of these professionals when deciding which business structure is best.

The services of an attorney will be needed to set up the business structure if it requires filing legal documents. It is wise to avoid the neighbor or church member whose practice of law is in another specialty. Some law firms offer a subspecialty in business start-ups or a "start-up package" of legal services for a set fee. Because risk of failure is a reality faced by all new entrepreneurs, the attorney and accountant should be consulted for the best way to protect one's personal assets if the business should fail.

Business Name

Naming the business is an important and pleasant task. The name will position the business in people's minds and affect the business' image. Nurses often use their names as the consulting name of the business. This is straightforward and leaves no doubt about ownership. Another option is to use the LNC's last name and add "and Associates" if other nurses are associated with the business at start-up or in the future. The name chosen should be straightforward and descriptive. Proceed with caution with more generic names,

such as Medical Legal Consulting Services. Check with the Secretary of State to see if there is a conflict in state rules. Some counties or states require the business name to be registered and some do not. This should be investigated prior to officially printing the business name on stationary, business cards, and so on.

Business Plan

A business plan is not a rigid document but varies according to the type of business. It can be short and simple or lengthy and detailed. It is usually divided into four distinct sections:

> **Description of the business.** The description of the business should include a vision statement — an outline of the purpose and goals of the business.
> **Marketing.** The specialized market to be served and how it will be reached should be described.
> **Finances.** The finance section should include an assessment of start-up costs as well as operating costs; how those costs will be paid for; and how the income and expenses will be tracked, and perhaps a monthly budget.
> **Management.** Management describes the day-to-day operations leading to achievement of goals or dealing with employees.

The business plan is a tool with a three-fold purpose: communication, management, and planning. The plan will communicate to investors and potential partners the potential of the business to make a profit. It helps the owner track, monitor, and evaluate progress by establishing timelines and milestones and guides the owner through the phases of business. The nurse might recognize it as a "plan of care" for the consulting business — assessment, interventions, and expected outcomes.

The Small Business Association (SBA) provides a wealth of information for the new business owner. It offers in-depth help on developing a sound business plan at http://www.sbaonline.sba.gov/. It suggests that the best way to learn about writing a business plan is to study real plans written by others in a similar business. Many examples are given at the site. Two pages of the site with excellent help for writing a business plan are http://www.sbaonline.sba.gov/starting_business/planning/basic.html and http://www.sbaonline.sba.gov/starting_business/startup/guide2.html#bplan. Also at this site is a link to an on-line business planning workshop by the SBA along with CIT, a corporation that lends to small businesses.

SCORE is a resource partner of SBA and is a nonprofit association that provides entrepreneurs with free, confidential, face-to-face and e-mail business

counseling. Counseling and workshops are offered at 389 chapter offices nationwide by volunteers who are experienced entrepreneurs or corporate managers and executives. The SBA Network of Training and Counseling Services (http://www.sba.gov/ed/) has a link to SCORE (http://www.score.org/on).

Liability

Many nurses carry professional liability insurance as opposed to being covered only by their employer. It is wise for the independent LNC to search for an insurance company that covers consultants. Some LNCs opt for E&O (errors and omissions) insurance; others are able to get a consulting services liability endorsement on their nursing liability policy. It is advisable to read the policies closely for exclusions. Be sure to check the company's claim payment history. It would also be helpful to network with experienced LNCs to learn which companies have been responsive to their customers.

Types of Businesses

The type of business that the LNC chooses will depend on financial need and personal level of comfort. Multitudes of books describe the types of business structures discussed in this section. One series, published by McGraw–Hill, has a book for nearly every state in the U.S. and outlines the business laws specific to that state. Each book is titled *How to Start a Business in* (name of state).

Sole Proprietorship

The simplest structure of a business is sole proprietorship, which usually involves one individual who owns and operates the business. If one person will solely own the business, this structure may be the most appropriate. This structure can be used even if filing taxes jointly with a spouse. The tax aspects of a sole proprietorship are appealing because the expenses and income of the business are included on the individual income tax return, Form 1040. Business-related income and expenses must be kept in separate accounts from personal funds and are then combined on paper to determine income for taxes. Quarterly estimated tax payments must be made on income, adjusted by business expenses and personal deductions, along with self-employment tax. The federal government permits estimated taxes in four payments throughout the year: on April 15 and in June, September, and January.

With a sole proprietorship, business earnings are taxed only once, unlike other business structures. Another positive feature is that one has complete control over the business. The downside of a sole proprietorship business

structure is personal responsibility for the company's liabilities, such as if a debt accrues or a legal claim is filed against it.

Partnership

If partners are included in the consulting practice, the business will need to be structured as a general or a limited partnership. In a general partnership, the partners manage the business and assume responsibility for the partnership's debts and other obligations. A limited partnership has general and limited partners. When legal nurse consultants involve other legal nurse consultants as partners, fewer filings and administrative complexities are involved.

One of the major advantages of a partnership is the tax treatment that it enjoys. A partnership does not pay tax on its income but passes through any profits or losses to the individual partners. When it is time to pay taxes, each partner files a Schedule K-1 form, which indicates each partner's share of income, deductions, and tax credits. In addition, each partner is required to report profits from the partnership on an individual tax return. Even though the partnership pays no income tax, it must compute its income and report it on a separate informational return, called Form 1065.

Corporation

The most complex and expensive business structure is the corporate structure. A corporation requires complying with more regulations and tax requirements because it is an independent legal entity, separate from its owners. The biggest benefit for a legal nurse consultant owner who decides to incorporate is the liability protection that he or she receives. A corporation's debt is not considered that of its owner, so if a nurse organizes a business as a corporation, personal assets will not be at risk. The corporation can also retain some of its profits, without the owner paying taxes on them. However, the owner faces double taxation on income earned in the corporation — once at the corporate level and again as an individual shareholder. Another downside of forming a corporation is the higher costs for initial set up because an attorney is usually needed to guide the legal nurse consultant through regulations particular to the business.

Incorporating a business can be accomplished without an attorney, but the process can be time consuming. The Secretary of State or the state office that is responsible for registering corporations must be contacted for instructions, forms, and fee schedules. One of the first steps in the incorporation process is to prepare a certificate or articles of incorporation. Some states provide a printed form requesting the proposed name and the purpose of the corporation; the names and addresses of those incorporating; and the

location of the principal office of the corporation. Bylaws must be written that describe in detail how the corporation will run. Once the articles of incorporation are accepted, the Secretary of State's office will forward the business a certificate of incorporation.

By using books and software found in libraries or on the Internet, it is possible to file for incorporation without using an attorney. Attorneys fees can cost from $500 to $1000 and increase the expenses of starting up a business. The disadvantage of filing without an attorney is the chance of missing some small but important legal details. It is possible to avoid the double taxation issue through a federal tax election known as S Corporation. Strict qualifying requirements allow it to be taxed like a partnership. An attorney should be consulted to assist with this process.

Location of the Business

Working in a home office has pros and cons. Tax advantages may come at the cost of home depreciation. Working from home is a big advantage for some, eliminating commutes and allowing one parent to be at home to monitor the family. There is no rent to pay. Taking over a spare bedroom or sun porch or creating a new room for business can be empowering and attractive; many vendors are designing hip, upscale office furniture that makes the work space look more like home.

However, integrating a business into the home is not conducive to productivity for some people. It requires family communication and cooperation. For example, children should not be allowed to answer the business line. Reviewing files and writing reports requires concentration. Every interruption costs time to refocus. Some home office entrepreneurs can ignore the rest of the house, with beds to be made, meals to be cooked, and laundry to do, just as if they have left for work at another location. Others can multitask and take care of household duties on breaks and lunchtime while keeping close track of billable hours.

A television commercial glamorizes working from home in your "jammies" and slippers. Yet, for many LNCs, dressing professionally equates with working professionally. The majority of home-based office workers are probably very productive in casual dress. Each professional must know how to make the home office setting productive to the business.

Funding

Many sources cite inadequate or mismanaged finances as one of the leading causes of business failure. The comparatively low start-up cost of a consulting

company is a great advantage. These costs depend greatly on choices: rent vs. home office, answering machine, or answering service; hiring employees or support services or wearing all the hats oneself. Basic printing costs are mandatory. The LNC chooses whether to use a generic logo, design a unique logo, or hire a graphic design artist. If the LNC has day-to-day accounting skills and uses the sole proprietor business structure, basic tax services can be relatively inexpensive, i.e., just slightly more to have personal taxes professionally filed.

The amount of money spent to set up an office will partially depend on the desire for state-of-the-art equipment vs. basic needs. Basic needs for setting up an office include

- Desk
- Chair
- Telephone/answering machine
- Computer
- Printer
- Fax
- Copier
- Software
- Paper supplies
- Small office tools (stapler, three-hole punch, magnifying glass)
- Book shelf
- File cabinet
- Floor space (for the boxes of files to be reviewed)

Used office furniture can save money, and the multifunction copier/fax/printer/scanner machines can save space and be economical. A dedicated fax line may not be necessary if the phone can automatically route a call to the fax machine. A dedicated business line is recommended. However, individual situations may allow use of a "distinctive ring," which alerts family members to incoming business calls that are to be answered appropriately. Technically, these items are tax deductible only if used exclusively for business purposes.

Loans

Many small businesses start out with small loans from family members who charge little or no interest. Banks probably offer the highest interest rate. Many low-interest, short-term credit card companies are looking for people with good credit. Credit unions make personal or signature loans with better rates than those of banks. An accountant may have connections to a financial institution. The SBA has a loan program in which they are a guarantor of

loans made by other institutions. This can be researched at their Website (http://www.sbaonline.sba.gov/financing/sbaloan/snapshot.html).

Summary

Legal nurse consultants are specialists, unique in their body of knowledge of nursing. The nursing educational base is very valuable to the legal professional in any area that involves health care issues, such as law firms, government offices, hospital risk management departments, and insurance companies. The specialty of legal nurse consulting is professionally described by the *AALNC Code of Ethics and Conduct* (AALNC 1992); *Scope of Practice for the Legal Nurse Consultant* (AALNC 1994); and *Scope and Standards of Legal Nurse Consulting Practice and Professional Performance* (AALNC 2002).

Education, credentials, and clinical experience form a solid foundation upon which to develop a successful career in legal nurse consulting. Though business and litigation can be foreign areas for the nurse, the LNC has the right skills and knowledge to be successful. True growth and success of an LNC business goes beyond unique business strategy. The LNC has the ability to think critically and work within a diverse group of highly educated professionals. Using skills from the clinical setting and solid business practices provides the right mix for an LNC to start and succeed in business.

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Essentials of Marketing

2

DEBRA SUMMERS

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Introduction

What is marketing and, specifically, how does marketing apply to the legal nurse consultant (LNC) with a start-up or existing business? The following are examples of marketing definitions provided by experienced legal nurse consultants:

> "Marketing is everything you do to promote your business" (Joos and Joos 2000).
> "Marketing includes all activities that attract and keep clients, from the inception of the business throughout its life" (Ellington et al. 2003, p. 1028).

Marketing is everything that the potential, new, or existing customer reads, sees, hears, or learns about the LNC, as well as every direct contact that the customer has with the LNC. The ability of the LNC to understand and carry out the following marketing fundamentals can make a significant contribution toward making sure that marketing efforts produce the desired results:

- Marketing focuses on attracting customers.
- Marketing proposes solutions to customers' problems.
- Marketing is directed towards potential, new, and existing customers.

Marketing is necessary for generating new business as well as providing a consistent influx of business. This means that marketing must attract potential customers in order to acquire new business; follow-up must occur to keep customers; and the LNC must market to existing customers to get recurrent business. This chapter discusses market analysis; marketing theories (why marketing works); marketing tactics (how marketing works); and marketing mistakes to avoid. It also provides tools that can help marketing efforts attract customers and generate business.

Before Starting

Before deciding how and where to focus marketing time, energy, and money, LNCs must first have a clear understanding of the product or service offered, to whom they are offering the product or service, and why. This ability to communicate purpose, define product, and set up long-term objectives provides LNCs with the direction needed for going forward and staying on track (White 2003).

Know the Current Challenges

After determining purpose and objectives, the LNC must assess the current business situation and identify internal and external challenges. Is the LNC just starting out with no customers or does he or she have some business but needs more? Is incoming business inconsistent or not the work desired? A negative attitude about marketing based on preconceived ideas can be a challenge as well. Added challenges can include unresolved conflicts; financial constraints; limited marketing experience; marketing that feels intimidating, burdensome, or costly; or discomfort with marketing for any reason.

Start with the End in Mind

Marketing begins with recognizing a need and then working backwards to develop products and services to satisfy the need (Edwards and Edwards 1998). Performing a market analysis helps the LNC recognize needs specific to a market or market segment. With a recognized need, the LNC can define a feature of the product that will appeal to the market audience and design a marketing message that specifically describes how the product will benefit the customer. The more specific the LNC can be when describing the product or service, the easier it is to eliminate the need to spread marketing efforts across many different markets.

A clearly defined market allows the LNC to describe the ideal customer and is the means for marketing to that customer. Knowing and focusing on the customer with whom the LNC wants to do business increases chances for success. An exercise that may help is to write a description of the ideal customer. For example, the ideal client may be a plantiff attorney who handles medical malpractice cases and is located in a small to moderate size firm.

A logical sequence-based framework requires that the LNC analyze multiple areas within the business environment prior to marketing. Performing the analysis helps identify opportunities for the LNC to succeed as well as potential threats to success in economic, social, political, and legal areas, as well as areas of cooperation and competition (Peter and Donnelly 1997).

Cooperation

To carry out the established objectives and goals, the LNC must determine if everyone with a vested interest in the business is cooperating. Are any unresolved conflicts present? What connection has the LNC created with customers? Is it difficult to collect timely payment or does the LNC feel that payment is less than the work is worth?

Competition

To pinpoint what sets a business apart from the competition, the LNC needs to know who the competition is, what they are doing, and why they are doing it. Competition includes not only individual legal nurse consultants and legal nurse consulting firms but also other litigation support staff such as nurse paralegals. Make a list of the strengths on which competitors focus. For example, the strengths of a competing life-care planning company may be:

- Five life-care planners are on staff.
- All life-care planners are certified, and the firm is located within an office complex.
- The firm is well known in the area.

Economics

The state of the economy and changes within it create marketing opportunities as well as limits. Is the LNC starting a business in a healthy economy? If not, can the business still thrive? How will changes in competitors' products or services affect the LNC? What is happening with products related to those of the LNC? What changes in technology may affect the LNC? Changes within a law firm that the LNC must consider include attorneys dissolving partnerships, young associates leaving firms with cases, and financial mismanagement.

Social

The social environment includes general cultural and social traditions, norms, and attitudes. Changes in the social environment, although they are typically slow to take place, may result in the need for new products and services. An example of social change is the growth in skilled care facilities due to demographics of the aging population.

Political

Attitudes and reactions of the public, social and business critics, and other organizations, which may have adverse effects on image and customer loyalty, make up the political environment. For example, the public's belief that frivolous lawsuits are common affects jury attitudes. Adapting business and marketing practices to these attitudes can be an opportunity.

Legal

Consider federal, state, and local legislation as components of the legal environment. Tort reform, for example, can create marketing opportunities as well as constraints. The LNC must be aware of the status of state-specific tort reform. What impact does complying with government regulations have on the LNC's business? Is any legislation pending that may require changes? For example, restrictions on the ability to sue for minor injuries suffered in car accidents can dramatically decrease the personal injury cases filed by a law firm. This change affects an LNC's practice.

Credibility and Credentials

Marketing efforts will produce business only when the customer perceives the LNC as credible (Hiam 2004). The professional credential that supports the specialty of legal nurse consulting is, first and foremost, nursing (Magnusson et al. 2003a). Nursing knowledge is what the LNC markets, regardless of the form the product takes or whether the LNC provides expert or consulting services.

Credibility is the quality of inspiring belief (Merriam–Webster 2004). Stephen Covey, author of *The 7 Habits of Highly Effective People,* describes credibility as the faith that people have in one's competency and the trust that one inspires (Covey 1990). Author and seasoned LNC Betty Joos advises that establishing and maintaining credibility requires that the LNC "…manage professional image, work product, dependability, and ethics…" (Joos and Joos 2000, p. 159)

The LNC must not overlook the power of first impressions. The customer presumes that the LNC has professional credibility from the first impression, right or wrong. A professional image serves as visual evidence of the LNC's expertise and indicates that he or she is a knowledgeable and capable professional who is worth the rates charged. Professional image includes physical presentation as well as resumes; CVs; business cards; marketing brochures; and work-product samples. Therefore, the LNC must carefully plan how best to project the professional image desired.

The goal of marketing, even for those just starting up a business, is for the business to become well known to those who make up the target market. If the LNC has not developed a reputation within the market, then, when the need arises, the well-known individual will receive the business. Taking the time needed to establish a reputation within the target market is well worth the investment. For example, exhibiting at attorney conferences helps with establishing credibility. When prospective customers and competitors see the LNC exhibiting with the large industry leaders in the market, it increases recognition of the business name and makes a positive impression.

Position Yourself to Be in Demand

Successful entrepreneur Norman Brodsky (2004) offers three myths about niches that may get in the way of building a successful business:

- *Myth # 1 — you must choose a niche before starting a business*. The LNC eager to get a business started may want to believe this myth, especially because the competition consists of LNCs who helped develop the original legal nurse consulting products in use today. Nevertheless, insights for solid niche development are more likely to occur after the LNC has a thorough understanding of the market.
- *Myth # 2 — once you find your niche, stay there*. No profitable niche lasts long for one simple reason, according to Brodsky: "…the more profitable the niche, the faster it will attract competitors and the faster you will lose the ability to offer something others do not…"
- *Myth # 3 — only large businesses can compete without a niche*. This myth is untrue because only reputation can take the place of a niche.

> Brodsky's retort to this particular myth further supports the importance of the LNC taking the time to establish a credible reputation. The LNC should build reputation and all marketing efforts on integrity, quality, and value.

Identifying problems that no one else is resolving — otherwise known as competitive advantage — is the reason why customers will do business with a particular LNC instead of the competition. Communicating competitive advantage effectively attracts potential customers. This chapter includes strategies for making the most of competitor advantage in marketing materials.

Marketing Theory

Marketing theory consists of the LNC's ideas about how best to serve the needs of the defined customer population (Peter and Donnelly 1997). Areas typically included are product, price, positioning, place, and promotion — collectively known as the "five Ps of marketing." LNCs must consider which of these areas are the most important in their marketing program.

The Five Ps of Marketing

Product

A successful product gives customers what they need. Therefore, the LNC must understand the work product from the customer's view. What customer problem does the product improve? What makes this product better than the product currently in use? Sample work product professionally presented can help the LNC with first impressions; however, the work product must meet the needs of the customer every time to produce more business and referrals. The LNC should visit or question the customers as to what they need done to improve the product.

Position

Position is also referred to as "market position," which is how the targeted market defines the LNC compared with competitors. Describing a unique feature is what allows the LNC to distinguish his or her business from competitors. An LNC with a good market position may stand out from the crowd with a unique benefit — a niche recognized by the targeted market.

The LNC needs to identify strengths to be stressed in marketing literature and look for problems to solve that no one else is solving. This is otherwise known as competitive advantage or the reason that customers do business

All known competitors	Location	Type of consulting/work products	Professional activities	Strengths/ weaknesses
Competitor A				
Competitor B				

Figure 2.1

with a specific LNC instead of the competition. Then, the LNC will be able to communicate this competitive advantage effectively to win potential customers. Analyzing current issues and the competitors' offerings may spur ideas for creative improvements to the LNC's product.

The LNC might discover some categories of customers with unmet needs. Satisfying unmet needs creates a "niche." By observing the actions of competitors, the LNC might also learn more about the market, such as the saturation level.

A summary of areas to consider in a competitor analysis, such as the chart in Figure 2.1, is helpful; however, the LNC will want to create a file for each competitor and insert all information specific to the competitor. List all known competitors and any that might enter the market during the next year. Summarize each competitor's location, consulting provided, work products, and involvement in professional activities. List competitor strengths and weaknesses from a customer's viewpoint. Then consider how to capitalize on their weaknesses and meet the challenges represented by their strengths. Consider competitors' strategies and objectives. Determine whether the marketing of the LNC business should be mainly to the competitors' customers. (This suggests the need for a strong competitive advantage.) Listen to what others are saying about the competition.

Know the competition's target audience, market position, product features and benefits, and prices. Visit competitors' displays. Analyze them for clues about the marketing tactics and target market. Taking photographs of the exhibit, however, is sure to generate ill will.

Place

Place is a synonym for distribution, which is simply how the LNC will make the product available to the customer. Nurses new to the field of legal nurse consulting must keep in mind that customers are most likely not shopping for their specific product.

Price

The new LNC must understand that the value of the product depends on the market position. Therefore, the LNC must establish a market position and be viewed as a viable competitor before setting a price.

To gain a position in the market, the LNC must identify an unmet need and create a product or services to fill that need. Nurses have received compensation for providing expert witness and consulting services since the early 1970s (Magnusson et al. 2003b). Market position is how the new LNC with little or no experience, or even the LNC with moderate experience, competes against the seasoned LNC who has many years of experience and exposure in the targeted market.

Promotion

Promotional materials include the LNC's biographical profile; company description and history; vision or mission statement; product or service description (brochure); professional photographs (if used); copies of articles or testimonials; and resume or CV. The LNC must keep the objectives of promotion in mind: to encourage a prospective customer to try the product or services; to build awareness and create customer enthusiasm for the product or service; and to reward loyalty. Promotional activity moves those in the target market through many stages, beginning with unawareness of the product or service to, ultimately, a purchase.

Create a Marketing Platform

Whether in print, in person, or via the Internet, a platform, or a theme, ensures that LNC marketing activities convey principal messages in a way that also meets the needs of the targeted audience. A platform is a tool used extensively by public relations professionals. It typically includes no more than three central points or key messages, with brief examples or tips.

To be effective, key points are concise, polished, practiced, and delivered spontaneously. A well thought out platform allows the LNC to communicate a clear, consistent message, which can provide a boost of confidence for the LNC in any stage of business. Having a theme in place allows for fine-tuning presentations for various occasions or audiences and provides a bridge to lead customer questions back to the key points. Thus, the principal message that the LNC wants to send is constantly reinforced. Communicating a clear, consistent message supports the credible and memorable image that the LNC wants to present.

Why a 30-Second Introduction Is Critical

A mainstay of the business world, an effective 30-second introduction is a creative, succinct, and well-practiced speech used with new introductions. An opening sentence grabs the listener's attention. The LNC then describes the unique benefits of services provided. The introduction must be prepared well in advance and practiced until it sounds spontaneous each time it is given. A great introduction makes a professional, memorable, and lasting first impression.

Needs-Based Marketing vs. Selling

Many nurses are not comfortable with the idea of selling. Fortunately, nurses are not only skilled but also highly trained in focusing on others, identifying needs, and developing solutions to those needs. The concept of needs-based marketing begins with identifying a need that is not being met; creating innovative ways in which to address that need; and then communicating those benefits to the customer in a confident manner.

Marketing Strategy

Avoid Common Mistakes

Imitating Competitors

It may seem that all LNCs market their products or services in a certain way. Perhaps a new LNC has been led to believe that imitating a successful LNC will result in success. The LNC's product or service can be set apart from competitors' products in many ways. What is different does not have to be product related; it can be related to anything that separates the LNC from competitors. The key is for the LNC to find that difference and turn it into a benefit for the customer.

Failing to Ask for the Business

Professional salespeople know that customers are accustomed to being closed, which is sales talk for asking for the business. The potential customer may interpret the LNC's absence of a direct request for the business as a lack of confidence in the services promised or an inability to deliver. If the LNC is convinced that the prospective customer is ready to try the product or service, a simple question may get business rolling. "Is there a particular case you have in mind?" "Do you have a specific case with which you would like me to start?" If the LNC does not ask for the business, there is a good chance of not getting it.

Stopping Marketing Efforts

The LNC with an established business may not feel the need or have the available time for continued marketing. A common trap to avoid is halting marketing efforts once a client is obtained or much work is coming in. Many changes in a law firm can disrupt the LNC's caseload literally overnight, such as dissolution of partnerships or young associates leaving the firm and taking cases with them.

Marketing from a Position of Desperation

The anxiety that accompanies the need to get business "right now" is often cited as the single reason why people bypass the steps that they need to take and then wonder why they cannot get the level of business that they need and want (Edwards and Edwards 1998). Trying to generate business from a position of desperation is a challenge and often leads to poor decision making.

How to Get Stopgap Business

Some examples of emergency stopgap measures available to get temporary income fast and relieve the LNC from feeling, sounding and looking desperate include the following.

Negotiate with a Former Employer

Successfully negotiating to do on a part-time or contractual basis what the LNC did on a full-time basis, or training a replacement, converts the former employer into a client.

Subcontract with Competitors

Subcontracting can be an excellent way of establishing a presence in the market as well as a source of business for the LNC experienced in areas such as case building, medical researching, or finding experts. The novice LNC can generate subcontracting revenue by performing tasks such as verbatim record entry or organizing medical records. However, the novice LNC must keep in mind that a trusting relationship is a prerequisite for getting business. The subcontracting LNC is ethically bound not to take advantage of the information obtained from the experience. This restriction would apply to work-product formats, names of expert witnesses, and so on. Chapter 5, "Working with Subcontractors," and Chapter 8, "Ethics and the Legal Nurse Consultant's Business," should be reviewed for more information.

Do Temporary Work in a Related Field

For the legal nurse consultant, temporary work can provide valuable experience and excellent contacts, as well as a flexible source of immediate income. Fortunately, opportunities for the LNC to do temporary work include such areas as performance improvement and risk management.

Volunteer

Volunteering is a way for the LNC to keep skills sharp and confidence strong. Any area in which the LNC can apply nursing knowledge is good, especially areas that provide new experiences, which can result in new contacts. The LNC may be able to reference volunteer experience with other business opportunities (Edwards and Edwards 1998).

Present at Professional Meetings

Some attorneys welcome outside speakers — for example, at local Bar association meetings. Others, like trial lawyer groups, may be wary of letting the LNC, viewed as a legal vendor, get behind the podium because of fear the vendor will start selling instead of teaching.

Effective and Low-Cost Marketing Strategies

Meet People Face to Face

For the LNC who is comfortable meeting people face to face, this can be a very effective way to attract business. For example, attending the same educational seminars as potential customers provides opportunities for the LNC to use the 30-second introduction and leave a memorable impression.

Talk to Gatekeepers

When traveling to an attorney's office for an interview, the LNC should make a point of extending introductions to the support staff — for example, the investigator who screens cases for the attorney, the secretary who may have the task of scheduling, and paralegals. Gatekeepers have regular contact with the LNC's potential client and therefore can be key to getting business.

Build Relationships

Networking is getting to know a person as an individual before knowing him as a customer. It is a long-term marketing strategy that provides visibility, promotes familiarity, and supports credibility. Networking can be effective as long as the events and activities include potential clients, customers, and referral sources. Keys to successful networking include consistent attendance at events, taking the initiative to meet new people at the activities, and performing consistent follow-up.

Say Thank You

Sending handwritten thank-you notes is a recommendation often made. Writing words of thanks need not be time consuming. Following up immediately with a handwritten note can take mere minutes out of the LNC's day, but create a lasting and favorable impression in the mind of the potential client.

Advanced Marketing Strategies

Exhibiting

The benefits of exhibiting include networking opportunities with potential customers, competitors, and other vendors; opportunities to practice sales techniques and receive immediate feedback; and support of other marketing activities. Drawbacks can include expense related to travel and costs associated with renting space and creating an appealing presentation. Exhibiting at a show with a poor turnout can be financially disastrous. The LNC must weigh benefits against risk when considering whether to exhibit.

Advertising

Advertising and marketing are not synonymous. Advertising is a marketing activity that involves purchasing time or space to promote a business. The objectives of advertising are to create an awareness of the LNC's business; provide knowledge of products and services offered; and, with repetition, generate leads. Advertising can but does not have to be expensive. The LNC can promote the company name, contact information, and a concise message containing key points in many cost-effective ways. Advertising avenues include print ads in newspapers, professional journals, directory listings, novelties, and the Internet. However, when considering advertising, the LNC must keep in mind that effective advertising requires repetition over time, which increases cost.

Who Should Advertise?

Unlike marketing, which targets a well-defined population, advertising is most efficient when targeting large numbers of people. Because advertising is not an avenue for rapid sales, the LNC who needs business today should consider other marketing strategies first. It is best to use a combination of marketing and advertising techniques until the right combination is found. Everything that the LNC does to promote the business will increase the chance that the target market will respond to the ads.

On-Line Advertising

It is best for the LNC to use a combination of marketing strategies. Chapter 3 covers Website development. When considering on-line advertising, the LNC must think about who will see the ad. People who see on-line ads have often specifically sought out or subscribed to an e-mail newsletter, list, or particular advertising site. Therefore, a well-placed on-line ad will most likely reach targeted individuals.

The LNC should write and design on-line ads to appeal to Web users and carefully select sites where the targeted audience has an active interest in the product or services offered. It works best, however, for specialized, niche businesses targeted to clients who are computer literate and who make frequent and regular use of the Internet, e-mail, or on-line services. Potential clients and customers may frequent other Websites in sufficient numbers so the LNC might want to consider purchasing advertising on their sites or at least buying a link to the LNC's site.

Instead of projected exposure, on-line advertising provides precise exposure measurement through counting the number of times someone sees, clicks on, or responds to that ad, and sometimes user demographic information.

Design Brochures and Other Marketing Materials

LNCs need printed materials that can be mailed to or left with prospective clients. Printed marketing materials reinforce key messages and the LNC's brand. To keep costs down, LNCs can use desktop publishing or graphics software to create their own brochures or flyers. This also allows for customizing the materials to specific customer needs. Marketing materials should be coordinated with the LNC's letterhead and business cards. Brochures are more effective when tailored to specific customer needs and focused on benefits.

Use branding to differentiate from competitors. Branding provides an opportunity for the LNC to stand out from the crowd. "A brand is to a company what a personality is to an individual" (White 2003, p. 204). Branding can be as simple as a unique color scheme or as intricate as a specially designed logo or business name. Branding helps the customer connect the product with the LNC and builds customer loyalty, both of which can significantly affect market position.

Publicity

Publicity or public relations is a marketing tool intended to promote understanding of the LNC's product or services and to promote goodwill toward

the LNC and his or her company and products. The main difference between advertising and publicity is that publicity is free. Publicity that can provide positive exposure without the appearance of advertising creates a strongly positive impression.

Public Relations Opportunities

The LNC can participate in local community events, give time or financial assistance to nonprofit organizations, and network with and educate citizens in the community. The LNC can build a credible reputation by taking part in conferences and training seminars. It is imperative to keep in continual touch with the market and community by activities such as publishing newsletters, writing personal notes and letters, or forwarding articles of interest, to name a few potential activities. If the LNC makes a positive impression on others, they are more likely to share their experience. This type of referral reduces advertising costs and should increase as the LNC gains experience and contacts.

Other Legal Vendors

Exhibiting is an excellent way for the LNC to receive valuable and immediate feedback on brochures and other marketing tools in use. Some states have formed legal vendor associations that hold meetings and share market intelligence on law firms. The LNC considering joining this kind of organization should determine whether the other legal vendors market to attorneys who handle medical issues. The time needed to attend meetings and costs of required dues must be balanced against the benefits. Alliances with other legal vendors may be useful for cross referral. The LNC can meet other vendors in the exhibit areas of attorney educational conferences and annual meetings, as well as medical–legal seminars.

Establishing a trusting relationship with vendors can lead to referrals of their clients. For example, an engineering firm may have a case that resulted in extensive personal injury. The LNC might summarize medical records for this kind of case. In return, the LNC can refer requests for engineering experts to the engineering company. Some vendors develop alliances that involve referral fees, percentages of billed service, or agreements other than financial compensation. The time to discuss this concept is at the same time at which the LNC forms the alliance.

The Internet provides access to legal vendor association Websites. From a review of the participating vendor list before the exhibit, the LNC can research vendors of interest and begin contact prior to the exhibit.

Establishing Alliances and Contacts

Strategic alliances are not established easily or quickly. Over the long term, however, alliances are formed through communication, cooperation, networking, and collaboration. Initially, when LNCs exchange information and resources, the focus is narrow and specific. Participation in professional organizations, such as the American Association of Legal Nurse Consultants (AALNC) and its local chapters, pulls LNCs together for shared purposes or goals. Formal organizational relationships involving a long-term commitment to address issues, such as AALNC national or chapter board of director positions or committee participation, require collaboration and trust.

Establishing alliances takes time, hard work, and commitment. The more that LNCs work together, the greater is the possibility of better understanding complex medical–legal and social problems and acting on them in an atmosphere of trust, cooperation, and mutual respect.

Conclusion

Marketing begins with identifying what the customer needs; creating a product or service to meet the need; establishing a price; letting potential and existing customers know about it; and then making it available. For LNCs new to the business world or for those who have never considered marketing, the process of marketing requires focusing on business goals and identifying strategies to use to achieve those goals.

The one hard-and-fast rule about marketing is that there are no hard-and-fast rules. Marketing strategies vary by individual comfort level, by size of company, and by stage of growth. The most effective marketing incorporates practical strategies reflective of individual personality and comfort level into the LNC's day-to-day business activities. For example, the opportunity to market a strong positive image through professional appearance and behavior exists every day — for the LNC just getting started as well as the LNC with an established business.

The goal of marketing is to attract customers. Therefore, the marketing message must first demonstrate the LNC's understanding of problems that customers experience and, second, offer solutions. In order to continue to do business, the LNC balances this customer focus with the business objective of making a profit. The marketing process is a tool that the LNC can use to plan strategies to accomplish both of these objectives. The key to effective marketing is to keep efforts ongoing so that various strategies can reinforce one another.

Success comes when LNCs give customers what they want — solutions. Market changes are inevitable and can be used to the LNC's advantage. Industry leaders take advantage of change, choosing to err on the side of enterprise rather than on the side of inaction.

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Website Design and Maintenance

3

TERESA M. TREIGER

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Introduction

The secret to a successful Website initiative is in taking the time to understand key concepts of what constitutes a well-organized, professional business Website. The decision to establish a Website is not one to be entered into casually. It can be a time-consuming effort that challenges as well as intimidates the most seasoned professional. The planning and execution process need not be stressful if time is taken to educate oneself about what to expect.

Goals for the Website

It is important to be clear as to the desired outcome of a successful Website. Being realistic is primary to the process of creating a Website. Farkas and Farkas (2002, p. 27) have noted that "in order for your Website to succeed, your purposes must be realistic. This means that your Website must correspond to real needs and interests." A number of Websites fail simply due to their lack of focus at inception. As noted by Powell (2000),

> In the first few years of Web design, many corporate sites were built purely to show that the firm had a site. Somehow, without a site, the firm would not be progressive or a market leader and competitors with sites were somehow a threat. Many times, the resulting site provided little benefit because it was not really designed for a reason other than to provide a presence for the company.

Developing a clear and concise goal helps the resulting statement be realistic.

The type of business dictates the site's purpose. The business owner should be knowledgeable regarding the kinds of people who will potentially browse the Website. Ask basic questions such as where the site visitors are likely to be from; average age and gender; languages; technical proficiency with computers and the Internet; and the purpose of the visit.

Another way to focus on the goals of the Website is to spend time asking people what they want from the Website. Consider the Website's benefit to the audience and compare that information to the company's vision. This should facilitate the establishment of workable goals to guide the project.

Concept Development

Whether the owner chooses to take on the responsibility of designing a Website or hire a Website designer, the owner must define how the Website should appear. Think of the Website as a sign hanging outside the office; it is a reflection of the owner and the business. If it looks poorly thought out and disorganized, people will make those same assumptions about the practice.

A good starting place is to look at Websites of similar businesses in order to identify what is most appealing. Certain colors may be too harsh, fonts may be barely legible, and formatting so distracting that one never seriously examines the content. Keep an ongoing list of these findings to avoid the same pitfalls. Critical evaluation of other Websites may reveal previously overlooked design flaws. When taken individually, these points have a subtle effect on a viewer's experience. Collectively, these problems can spell disaster for a Website.

Navigational errors are most noticeable because navigation is how the visitor interacts to get around the site. Pay attention to things such as the site's name, section or page name, and the location of the page on the site, as well as search options. Clarity in the site's navigation leads visitors around the site and helps to keep them interested. When a visitor enters a site that is too difficult to navigate, chances are he will leave long before he examines the site's content. Here are a few more questions to consider in reviewing other sites:

- When visiting a site, is it easy to navigate from one page to the next?
- Is the subject or topic identified on each page?
- Are graphics complimentary to or distracting from the page content?
- Does the site have an organized format or theme throughout or does each page appear to be set up differently?
- Are site colors subdued and professional or loud and gaudy?
- Are appropriate and timely photographs used or do they give an outdated appearance?

Developing a Site Plan

It is important to understand the Website's audience. The tone of the site should address the average user. Writing at too high or too low an intellectual level risks turning people off and losing site traffic. The site content should be driven by the needs of potential readers as well as what the owner thinks is important.

Content Development and Writing Style

Writing for the Web is different from writing a hard-copy document. Readers do not separate content and design. The combination of these elements makes up the overall experience. In *Designing Web Usability* (1999), Nielsen discusses the writing experience as it affects the user, "When writing for the Web, you're not only affecting content, you're affecting the core user experience because users look at the text and the headlines first. Although it is important to be grammatically correct, it's also important to present the content in a manner that draws in readers" (p. 100). Viewers scan headings to save time. If a heading does not grab their attention as important enough to seek out more detail, they will move on to another area or another site entirely.

A number of factors influence the style of writing for the Internet. Reading from a computer screen is slower than reading from the written page. In addition, Farkas and Farkas (2002) discuss how Web-based reading tends to be more casual, so people are more likely to move along to another site if they do not readily find the information that they need. "Patterns of behavior develop around each communications medium. One characteristic we see in Web use is the willingness to quickly abandon a Website as soon as the user experiences just a bit of boredom, disappointment, or frustration" (p. 220)

Another consideration is the inability to know that point at which a reader will start to review the site. A linear writing style starting from page x and continuing through page y is not as important as making each page a separate document, with a start and end point that may be read and understood in whatever sequence the reader follows. Krug's (2000) supposition is that writers tend to place imaginary constraints on readers:

> When we are creating sites, we act as though people are going to pore over each page, reading our finely crafted text, figuring out how we have organized things, and weighing their options before deciding which link to click. What they actually do most of the time (if we're lucky) is to glance at each new page, scan some of the text, and click on the first link that catches their interest or vaguely resembles the thing they're looking for.

Although the visitor's experience of the site can be controlled, removing options to move freely around a Website restricts the visitor and leads to boredom and, ultimately, loss of potential business. The benefit of nonlinear communication is that of engaging the visitor to follow his logic in seeking out the desired information. This needs to be balanced with the risks of nonlinear writing, which are held by some (e.g., Farkas and Farkas, 2002) to be redundancy, dullness, loose ends, confusion, and missing information.

Information Chunking

Reading Website content is a dynamic experience. Users move around from page to page without regard to the intended order. This is called nonlinearity. A major benefit to the user is the ability to move directly to the information sought. Users are also able to follow their constructs to find the desired content. The owner should be mindful of this because the manner in which information is presented influences the user's decision whether to stay on the site or to move to another.

Information chunking is the practice of separating data into manageable segments that are clearly and concisely presented to the reader. Chunks are separated according to the idea or topic — avoiding unnecessary wording and relegating more detailed content to secondary screens. These organized, manageable groupings should have appropriate headings to make the viewer less apt to leave the Website because his scan for information is easier.

Information chunking is also referred to as modularity. "Modularity refers to content that has no prerequisites. It can stand alone and still provide a satisfying experience for the reader..." (Farkas and Farkas 2002, p. 225). Modularity is effective when the user seeks discrete facts. A noticeable drawback occurs when the user wants to gain a comprehensive understanding of a topic. Without the support of clear navigation to lead to all necessary topics, the user may be left with an incomplete view of the subject matter.

Layout and Color Scheme

Simplicity should govern design layout decisions. The goal is to make the business information easy to find and pleasant to read. Avoid some common pitfalls of novice site builders, such as:

- Poorly organized navigational design
- Absence of a logical and unified layout
- Color selection based on personal preference rather than on screen appearance

The layout of the site should follow a few basic rules. Donald A. Norman (1988) states that "mapping is a technical term meaning the relationship between two things, in this case between the controls and their movements and the results in the world." Norman uses the example of steering a car (p. 23):

> The user must identify two mappings here: one of the 112 controls affects the steering, and the steering wheel must be turned in one of two directions. Both are somewhat arbitrary. But the wheel and

> the clockwise direction are natural choices: visible, closely related to the desired outcome, and providing immediate feedback.

Stated at its most basic level, maintaining a simple, intuitive approach to layout enables users to identify and find all the important information.

Keep the color scheme professional and easy on the eyes. Raspberry red and chartreuse may be the most beautiful colors in the world, but the ways in which these colors translate to the computer screen and in which users perceive them are factors that matter more than personal preference. Colors can be interpreted very differently from one computer screen to another. Be careful in selecting colors that are too trendy because they may not appear as expected and will become outdated over time.

Colors should be complementary and convey the same sense of professionalism that visitors should feel upon entering the business office. Colors traditionally associated with Websites relating to the legal community include dark red (burgundy); dark green (forest or hunter); dark blue (navy); and wood hues such as oak and mahogany. These are formidable color schemes that project seriousness. Less intense tones within those color families are also effective.

Navigating the site should not require a degree in cartography. Although Website designers have the ability to force users to navigate a site the way that they want them to, it is not recommended. Sites developed in this manner are harsh and hostile to users. "It is better to design for freedom of movement and flexible navigation that supports many different ways of moving through the site" (Nielsen, p. 214).

Many Websites boast two alternative options for navigation. Usually, one is found on the left-hand side of the computer screen in columnar format. The second is found at the bottom of the screen, usually as text links. Some sites also use special scripting to leave a *breadcrumb* trail so that the visitor knows where he is within the site. These breadcrumbs routinely appear near the top left side of the screen and follow travel through the site page by page (Figure 3.1). This feature is helpful on very complex sites, but it may not be necessary for most "business card" Websites.

Links

Offering links to other Websites is an excellent way of providing more information and resources to site visitors. This not only makes the site more interesting but also helps improve search engine result because some search engines list pages with links higher in ranking.

When should there be a link to another Website? It makes sense to link to another site when it offers additional information that is not easily duplicated within the business' site. For example, it would not be feasible to

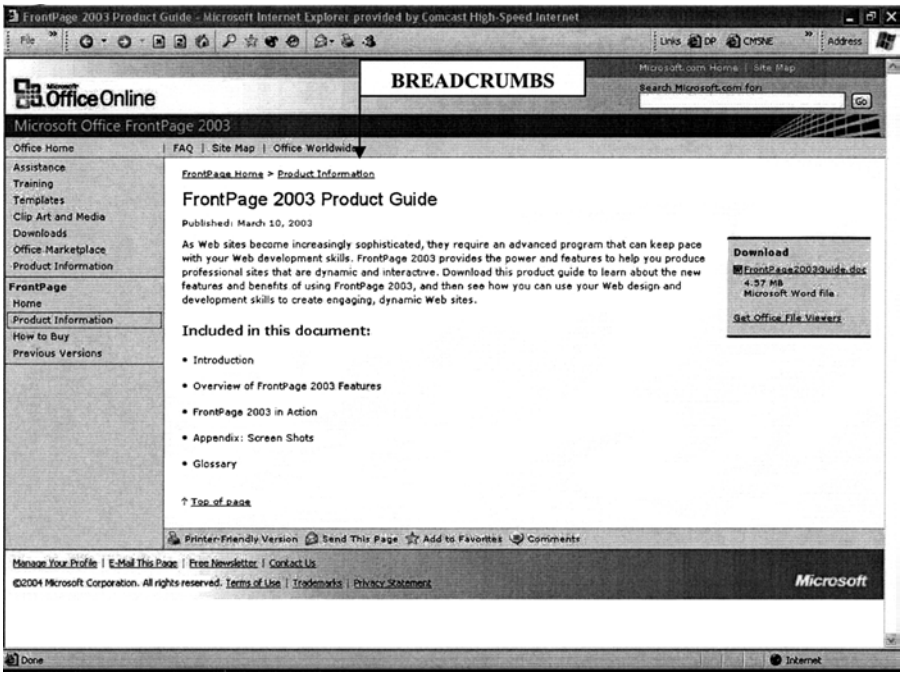

Figure 3.1 Breadcrumb trail. (Reprinted by permission from Microsoft® Corporation.)

recreate a glossary of terms on the site when a reliable site dedicated to this information already exists and is freely accessible. Maintaining a resource of links should not result in an inordinate amount of time being taken away from primary business responsibilities.

Providing reciprocal links helps broaden the Website's exposure. A reciprocal link is one in which the LNC and another business agree to list each other's Websites. The key here is to provide a link on the Website as long as the business that is linked provides one of the same level of prominence on its Website. If the other site deletes the LNC's link, consider the reciprocity terminated and remove their link as well. Again, this is a maintenance issue. The LNC needs to perform or pay for periodic validation that all links still function. Link checking services provide this service at a nominal cost. The Websites to which links lead should maintain appropriate content. Websites have been known to change subject matter, thus resulting in irrelevant content. Be careful not to become overextended in terms of what can be reasonably monitored.

Online business directories are useful for getting a link published. Most of them simply ask for the Website address and the promise to place a link to their page on the Website. Be sure to find out if submission of the

information allows the directory to resell it. If that happens, one may be inundated with unsolicited e-mail spam.

Another thing to keep in mind is that Website hosting companies looking to solicit new business often sponsor business directories. This may actually be a good thing if they offer good design or hosting rates. Some may ask to place a banner advertisement on the site. However, be careful because these can be unsightly and take up valuable hosting storage space. They may be scripted to gather and report user information on visitors to the site back to the host.

A member of AALNC may be able to link the local chapter's Website. If one is not already in existence, encourage the local AALNC chapter to establish a Website. Request that they start a Website link page as an added value for members. This is a nice member benefit because, when users search for resources, they often find professional organizations to be a good starting point. The chapter's link page could be organized by region or town and provide another valuable tool for visitors to find local resources.

A links page should be configured to keep users at the site. Links may be formatted in a number of ways. The best way to avoid losing site traffic is to set the linked page to open a new window. This increases the likelihood of visitors returning to the site once they have viewed the other site's content. Frequently, users click out of a Website rather than backing up to the site of origin. When they click off that page, the LNC's site will still be open in a separate window. It is more likely that users will pick up looking at the site than it is that they will take the time to search for the site again.

Use of Graphics

Although pictures and graphics can be visually interesting and helpful in demonstrating a point, overuse often results in distraction and frustration for the user. Placing images on the site simply to break up text is not a sufficient reason to load up on graphics content. Image files take up disk space, increase page download time, and detract from a polished image. Server space should be conserved to allow for future expansion. Every element placed on the site should add value. The rule of thumb is that the judicious use of pictures and other graphics will make the site stand out.

It is important to check the timeliness of images used on the site. For example, make sure that pictures of people have current fashion and hairstyles. Microsoft maintains a robust clip art resource at http://office.microsoft.com/clipart/default.aspx. Browsing here will help locate images that express the *feel* of the site.

One graphic to consider is a hit counter. This is a simple way of identifying the number of visitors to the Website. Websites usually maintain this tally at the bottom of their homepage. Bear in mind that this function is

useless when someone arrives at the site through a page other than the one on which the counter resides. As an alternative, check with the hosting service; it may provide reporting features that will give this information.

Beware of companies that tout free counters. The company "giving" this counter code is often using it to make a profit by reporting the LNC site's user data to marketing companies who, in turn, solicit users with junk mail, place them on mail lists, or exploit their information for profit. Although a hit counter is a simple way to demonstrate that people are visiting the site, it seems to have fallen out of favor with most Websites.

Website Project Management

A Website project should be approached in the same manner as that for any other project. Regardless of whether the LNC is doing this alone or working with a developer or designer, it is necessary to have a well thought out project plan to ensure proper execution.

Be organized in planning and realistic with time frames. Many business people are novices with this aspect of technology, so their perspectives are limited. To better prepare, talk to colleagues with established Websites. Ask about their experiences and especially about time frames. If specific issues are mentioned, ask about how to avoid the same problems.

Be clear about the goals of the Website. Is its purpose to inform regarding the practice, to educate about the specialty, to make money selling a product or service, or to improve customer service? Come up with a goal statement that captures the essence of the objectives. An example might look something like:

- Improve customer knowledge by providing answers to common questions on a 24/7 basis.
- Create an online business card that informs the customer about practice, hours, location, and value to the public.

It is imperative to set and maintain a budget around the Website project. Whether the LNC opts to develop the site or work with a professional, it is very easy to lose track of costs. If the budget to get the Website designed and online is only $1000, be sure that the designer understands this. Do not get caught spending the entire budget on site design only to find that the fee did not include the cost of hosting or domain registration.

The LNC who decides to design the Website should take time to figure out the real cost. In addition to the cost of software and training, there is the intangible cost of the amount of time taken away from the primary business. Assuming the goal is for a professional, polished Website with 6 to 10 pages

of content, take the business' usual hourly rate and multiply that by 30 to 40 hours. This gives a sense of the potential loss in income and puts the cost into context with professional design fees, which generally run between $30 and $50 per hour. Although the owner will certainly spend some time working with a developer or designer, it will almost certainly have less impact on the billable time than if the LNC opts to do it. Based on the analysis of the details weighed against the available time, make an informed decision as to whether to hire a Website designer.

Domain Registration

Currently, Websites are addressed using uniform resource locators or URLs. The URL tells a browser (e.g., Microsoft Internet Explorer or Netscape) where to access the Website. The proper Website address includes a series of component parts. Some browsers are able to fill in incomplete URL entries; others are not programmed to do this and may mislead users to different sites or respond back with an error message indicating that the site is not available.

Making sense of a Website address is best done by breaking it into its component parts. Figure 3.2 demonstrates the component parts of a Website URL. URLs can pose problems for users because of the manner in which some site names are set up. The array of slashes, colons, and extension options is such that being off by a single keystroke prevents a potential visitor from finding the site. To avoid this, select a domain name that is simple and pertinent to the business.

Domain names with unusual spellings may mislead site visitors to another destination. Consider one Website for the company Easy Closets. The actual Website address is www.easyclosets.com; possible variants are www.easycloset.com; www.ezclosets.com; or www.easyclosets.net. One can see how easy it is to miss a Website.

Knowing the Website extension to use can be a bit tricky. Although recommendations govern the manner in which Website extensions are

Figure 3.2 Website URL components.

selected, not everyone follows them. Table 3.1 helps differentiate the meaning and use of each extension type.

Some domain extensions are specific to a country. The requirement for these sites is that the business must be located in or do substantial business within the country. These extensions may be applied to business and personal Websites. The length of the domain name varies, so it is important to check with a reputable domain registration bureau prior to selecting a Website name. Some of the available extensions include:

- .US (for use by U.S. citizens and residents, corporations, and other organizations with presence within the U.S.)
- .CA (must meet Canadian presence requirements as defined by the Canadian Internet Registration Authority)
- .ORG.UK/.CO.UK (for use by United Kingdom)

Other extensions and their usage should be thoroughly researched prior to utilization.

During the registration process, consider registering alternate domain names using different extensions. Alternate domain names provide users with other routes in which to enter your primary Website. It may also help to avoid misdirecting traffic. In the Easy Closets example given previously, this company registered two similar domain names (www.easyclosets.com and www.easycloset.com) to avoid losing traffic. Frequently, mistyping a Website URL by even just one character may result in landing at a Website other than the desired one. Reserving variant names helps to avoid that happening. It is not necessary to design a Website for each domain; simply point the secondary domains toward the primary site. The Website host should be able to help accomplish this.

Domain registration may be handled through any number of bureaus, such as Register.com; Network Solutions.com; and even Yahoo. Many other companies provide this service; many advertise lower fees as an enticement. Fees vary widely and may be based on special pricing offers. It may be more cost-effective to register a domain for at least 2 to 5 years at a time. Be sure to read the fine print to ensure that there is no commitment to more than the domain registration.

The actual process of domain registration is usually simple and quick. Most bureaus allow the opportunity to research name options and provide instant feedback as to whether the domain name is available. If someone else already owns the desired domain name, the LNC may contact him directly to inquire about buying the registration or determine whether an alternate choice is available.

Table 3.1 Common Website Extensions and Usage

Extension	Guideline for usage	Notes
.COM	Use for commercial and personal Websites	Only letters, numbers, or hyphens may be used in domain name; cannot begin or end with hyphen Must have no more than 63 characters (excluding extension) If domain name is longer than 26 characters, may experience difficulty with some browsers, Internet applications, and e-mail clients
.NET	Recommended use for Internet-based companies	As noted for .COM
.ORG	Recommended use for nonprofit companies	As noted for .COM
.INFO	Used for commercial and personal Websites	Only letters, numbers, or hyphens may be used in domain name; cannot begin or end with hyphen Must have at least 3 but no more than 63 characters (excluding extension)
.BIZ	Restricted to commercial and bona fide business purpose sites	Only letters, numbers, or hyphens may be used in domain name; cannot begin or end with hyphen Cannot have two hyphens sequentially Must have at least 3 characters but no more than 63 characters (excluding extension)
.NAME	To be used for personal sites	Must be first and last name First name must be at least one character Last name must be at least 3 but no more than 63 characters Only letters, numbers, or hyphens may be used in domain name; cannot begin or end with hyphen
.WS	To be used for commercial and personal sites	.WS signifies "Website" Only letters, numbers, or hyphens may be used in domain name; cannot begin or end with hyphen Must have at least 4 characters but no more than 63 characters (excluding extension)
.PRO	Limited availability domain extension for use by self-certified professions — medical doctors, attorneys, and certified public accountants	Every registration is verified against a certification database prior to completion Registration fees are substantially higher than for other domain extension types Registration fees are nonrefundable regardless of whether registration is successful

Registration bureaus may offer services such as Website hosting, Website building tools, or design services. One of the more established bureaus, Register.com, offers a wide array of cost-effective alternatives that provide tools to build a Website. Go to http://www.register.com/pricing/index.cgi to view the different levels of service and pricing.

Sometimes designers register the LNC's company domain as part of the service package using their name rather than that of the company owner. This designates the designer as legal owner of the domain. The LNC who opts to work with a designer or who takes over site maintenance should be clear on the issue of domain ownership so that he or she is the legal owner of the domain name. Domain registration agencies will not mediate these situations. The LNC may be forced to take legal action in order to force the transfer. The best way to avoid this is for the LNC to register the domain or put in writing that the domain must be registered in the LNC's name.

To Build or not to Build

Taking on the project of building a Website vs. hiring a designer is an important decision. In today's competitive market, it is not necessary to spend an exorbitant sum of money to get a professionally crafted Website. The LNC must be discerning during the selection process if he or she opts to contract the design process to someone else.

Evaluating and Engaging a Designer

An LNC with the right software, knowledge of the overall process, and a lot of patience can be called a Website designer. This is not to say that the LNC would be a good one, but because the designation does not require licensure or specific education, it is one that anyone can, and does, use.

Qualifications are important, but should not necessarily be viewed as deal breakers when evaluating Website designers. Some individuals dedicate their careers to Website design; others are more casual in their pursuit of supplemental income. As mentioned previously, some companies offer a "one-stop" solution. No one has cornered the market on skill and ability, so keep an open mind.

A word-of-mouth referral is what many Website designers, and most professionals in general, appreciate receiving. Talk to colleagues about their experience. Be sure to ask if they worked with a designer. Ask for the colleague's business card because the Website address should be provided. Make note on the card as to whether the colleague designed the site or worked with someone and be sure to note the designer's name. Many people are more than happy to share experiences, so be sure to inquire how the process went.

Most importantly, check out and evaluate the Website. Does it leave a positive impression of the business? Does it encourage a lengthy visit or to pass it by for lack of a compelling reason to stay?

Another good source of information is AALNC's network. Look into who designed the sites of Websites of AALNC chapters. Ask the chapter contacts for their feedback and their experience in getting the Website up and running. Evaluate the chapter Websites in the same manner as was used to judge a colleague's site. The objective is to look around, get ideas for the site, and obtain recommendations from those who have gone down this path.

Once armed with a focused list of resources, the LNC may opt to seek proposals before making a decision. Carefully analyze the responses because they can be a good indicator of what it will be like doing business with the service providers. Pay attention to the feel and tone of the working relationship during this phase. A company may promise a spectacular Website design and package solution, but if obtaining the actual proposal and specifications from them is difficult, it may not be worth the price (money or effort).

Unless the LNC plans to take over maintenance of the Website, understand that the relationship with the designer is going to be an ongoing one. Be sure that the designer is easy to communicate with and carries out instructions without undue questions or delay. Finally, understand the fee structure around site content or format maintenance updates. Ask the designer for explicit turnaround timetables and for a fee structure. Use Table 3.2 to help in organizing a search for a designer.

Do It Yourself

Three general approaches can be used to build a Website. The first one is learning to write HTML code. This method is tedious and generally reserved for true techies who enjoy writing raw code. The second method is to use an HTML editor, such as Microsoft FrontPage, that converts plain English into HTML code. These software packages employ a process known as WYSIWYG, (pronounced "whiz-ee-wig"). This stands for "what you see is what you get." Instead of seeing a page full of code, one sees exactly what the page will look like when it is viewed on the Internet.

Finally, some Website builders allow selection from predeveloped options, such as America Online's (AOL) site builder tool, with a "fill in the blanks" approach. These templates may be the most expeditious manner of getting a site up and running, but they give sites a cookie cutter appearance and customization features are limited. Access to the AOL site builder tool is restricted to subscribers only.

As mentioned previously, some domain registration bureaus provide site-building tools and templates to help first-time Website owners get their site up and running. Use of these tools may or may not be included in package

Table 3.2 Website Designer Assessment Tool

Decision point	Considerations	Met
Experience	How long has designer been in business? Evaluation of designer's Website: Color Content Consistency Load time Navigation	
Testimonials	Are references given freely? Do references speak well of the designer?	
Credentials	Does the designer have credentials relating to Internet technology, software use, graphic design?	
Technology	Is advanced technology on the Website wanted, e.g., integrated databases, Flash®, or eCommerce functions? If so, be sure the designer has experience in these areas.	
Services	Will the designer assist with domain registration, hosting, form submission retrieval, e-mail group administration, ongoing maintenance, etc.?	
Fee structure and payment terms	What is included in the initial Website design charge? Does the fee include hosting? Does the designer expect partial payment to initiate work? When is the balance due?	
Support	What is the turnaround time for completing updates and maintenance work?	

plans. Some plans force the site owner to use the available editing tool and allow for no flexibility. Read the fine print before purchasing package plans to become fully aware of the agreement details.

There are a myriad of HTML editor software options, such as Microsoft's FrontPage and Macromedia's Dreamweaver. Be prepared to invest time and money in purchasing and learning how to use any software package. Some software programs are easier to learn than others are. Regardless of whether the LNC opts for a WYSIWYG editor or not, learning new software requires a time commitment to make the most of the available features. This translates into time away from the primary business, but does allow for more flexibility than site builder tools do.

The LNC who understands how to build or change pages can easily make updates to the Website without relying on someone else. Using a designer to add a new feature or revamp the look of the site is another way to use the skills of a professional. Some of the common editing packages and additional details on where to obtain them are listed in the Table 3.3.

A number of reliable resources provide an overview of how to use available functionality within specific software packages or are helpful in learning basic coding and page creation. The Website of the software company may offer technical support and e-mail bulletins to help resolve commonly encountered problems. The "For Dummies" series makes learning more enjoyable because of taking an irreverent, plain-English approach to the subject matter. Also, online courses are available for a select number of subjects. For a more complete list of books and courses in this series, go to www.dummies.com.

More advanced reference books are available, such as *The Complete Reference* series put out by McGraw–Hill. These books are excellent, well-written resources and do not require the reader to have an advanced technology degree to comprehend the content. To evaluate this series, visit www.osborne.com.

Website Hosting

There are a number of hosting options for the do-it-yourselfer (D-I-Y), some of which are free. Utilizing a free server option is likely to affect the Website domain name. Free Website hosting usually means that the Website name will be based upon the company that provides the service. For example, free hosting at Tripod means that the Website name will look something like www.tripod.com/yourcompanyname. This makes it clear that the Website is hosted on

Table 3.3 Common Website Editor Software

Program	Source	Details
Netscape Composer	home.netscape.com	Part of the Netscape Communicator product suite Works on PC and Mac operating systems
Microsoft FrontPage and FrontPage Express	www.microsoft.com	Integrated to work with Microsoft products Frontpage Express is often preloaded onto newer computers Allows raw coding and WYSIWYG design Runs best when Microsoft extensions are installed on host server
BBEdit Lite	www.barebones.com	For use with Mac operating system As the name states, this is a bare bones editor, but has a very loyal user group
Dreamweaver	www.macromedia.com	Allows raw coding and WYSIWYG design More advanced application Anticipate longer learning curve

a free server and potential clients may make inferences from that alone. It also leaves the site open to having mandatory pop-up windows, advertising banners, and floating icons that appear in exchange for the free hosting arrangement. Although cost may be a primary concern, the LNC would be better served spending more of the budget on a reputable Website host.

It is important to understand the Website size and space needs for the future as well as for the present. Expansion of the Website features with a newsletter, more graphics, and e-commerce will require additional server space over a period of time. Be sure that the hosting plan allows room to grow as well as accommodates an appropriate level of traffic through the site. Two terms to understand are *disk space* and *bandwidth*. Think of the Website as a home and apply the analogy that disk space is the size of the lot and bandwidth is the number of doors into the home. A lot that is too small or has only one door through which to enter limits the ability to expand the home and makes it more difficult for people to get in.

Many designers have established relationships with Website hosts. Some may even operate their own servers and have the capability of hosting Websites. At the very least, a good designer can and should be able to help based on actual experience.

Some of the least expensive hosts may sell e-mail addresses to various junk mail senders to offset the low price of their hosting packages. Be sure to read the small print for language that may indicate this practice. Look for wording pertaining to the permissions around use of domain e-mail addresses.

Most Website hosts present their package plans by listing the more common options and features by category. These are comparison points to help make an informed decision. Table 3.4 provides a few of the more common concepts and terms that may be encountered in the context of Website hosting.

Maintenance

Once the site is up and running, it must be maintained. Content quickly becomes dull and dated to users if it is not refreshed. It is the site owner's responsibility to give users a reason to return to the site.

The Internet is a "pull" technology — meaning that individuals must be pulled into looking at a Website. Gregory (2004) notes that "readers actively pull from Websites only the information that interests them, and other material is ignored." Why would people want to return to the Website? The LNC should ask why he or she returns to certain Websites as an exercise in trying to determine the features to include in the design.

Table 3.4 Common Hosting Terminology

Term	Definition
Disk space	Amount of space allotted to store Website pages; if Website will grow over time, allow for sufficient room
E-mail accounts	Number of domain name e-mail accounts included as part of the hosting package, e.g., for an office staff of three, each may have a domain name e-mail address; be sure package includes a sufficient number of e-mail addresses
Traffic limits (bandwidth)	Each time a Website is accessed, server requires a certain resource amount, called bandwidth, to pull the page up; a site heavy with graphics and other complex tools will require higher bandwidth
Access to domain e-mail	Allows access to mail via the Internet in addition to e-mail client software; check to see if packages include Web-based e-mail
Account management features	Easy to understand and access administration tools are critical for maintaining Website; helps to be less reliant on the Website host help desk
Reporting	Tools to help understand where site traffic is coming from, how many users are visiting the site, etc.
Customer service	Technical support should be available 24/7; if not, what are restrictions? Is limited access acceptable in the event that the site is not working properly?

To maintain the site, develop a long-term approach on how and when to update its content. Consider adding features that act as magnets to attract visitors back. (For example, visit www.aalnc.org for ideas relative to current organization news, new products, and other changing content). Be sure to set aside sufficient time to maintain the functions of the Website. The LNC who delegates the maintenance function to someone else should provide him or her with content and guidance for content updates.

When working with a Website designer, clearly state expectations as to performing maintenance on the Website. Two important pieces of information need to be defined: how much the updates cost and the turnaround time for completion of updates.

A Website should never be considered a static project. Although the initial project of getting the Website up and running will have definite start and finish points, the content of the Website should generally be considered a work in progress. It requires a commitment of time, intellect, and financial resources to keep it a timely and interesting resource for existing and potential clients.

Marketing

This section focuses on two distinct aspects of marketing: the Website as an advertisement for the business and the marketing of the Website. As an

advertisement, the site acts as an Internet business card. The site components that fall into this category include information about the LNC such as professional credentials, qualifications, specialization, and so on. Then, consider the expanded purpose of the Website as a marketing tool. The Website, as a reliable reference point for clients and the public, will be a successful strategy.

Website as Advertisement

As more people learn about the Website, more potential clients and referral sources will be available. Website promotion encompasses a number of approaches. The ultimate goal is to make people aware of the Website. This need not be a complex, multimedia campaign. It is best to look at this as a multitiered effort starting out with the simplest actions and progressing through more involved methods.

- Start with the basic "word of mouth" informational promotion. Tell friends, family, and current clients about the site, although this has drawbacks. For example, not everyone will know to spell the URL correctly and the number of people who can be reached has a limit.
- Add a signature to outgoing e-mails so that every e-mail acts as an announcement for the Website. This helps make people aware of the Website address and it is a no-cost way to start announcing the site.
- Update printed marketing materials, letterhead, and business cards to include the URL and e-mail address. *At the very least, have business cards reprinted with the Website URL and e-mail address.* Be sure to distribute them. The LNC should send announcements of the new Website to current and prospective clients, vendors, attorney offices, friends, and people with whom he or she does business in personal life, such as a hairdresser, because everyone is a potential referral source. Consider a mailing of postcards or flyers to current and potential clients. Include the Website URL, as well as some highlights of the LNC business and new Website. Use addresses currently available or purchase a mailing list to expand the audience. This can prove to be costly, and it may not be worth the expense.
- Consider leveraging Internet technology by using services such as www.sendomatic.com or www.evite.com. These services send out electronic greetings that are created and edited online. Another resource is www.cardstore.com to create hard-copy mailings. Think creatively when using services of this nature. Although they may be primarily focused on invitation types of greetings, they may be formatted to suit the purpose of an announcement type. As a convenience, most of these services allow uploading of a personal address book to simplify addressing each notice.

Website as Marketing Tool

Although information about the LNC's practice is important to include on the site, this will not keep individuals engaged in its content or compel them to return. There are many other competing Websites. If the information is not exactly what is sought, it will not be utilized.

Attracting Website traffic requires something referred to as *dynamic magnetism*. This is defined as an ever changing lure for site visitors that promotes return traffic through consistent, meaningful changes to the site at regular intervals. It is not sufficient to offer a few information points to visitors. Update the site on an ongoing basis to maintain and increase interest level, as well as to demonstrate the depth of professional knowledge. Establishing a revolving and renewing point of contact pulls customers back to the site.

Other communication tools that pull in potential clients can be used in conjunction with a Website. These information paths provide the audience with insight to the LNC's professional knowledge. Examples include newsletters and e-mail groups.

Newsletters

Offering something of value to people as an inducement to visit the site is likely to get a positive reception. Accurate and reliable information on a complex subject would certainly qualify. Consider creating a simple newsletter or useful periodical e-mail announcements for clients. This gives an opportunity to launch reminders about the business and Website. Posting these on the Website demonstrates professionalism and contributes to the perception of the LNC as a knowledgeable resource. Be realistic in pursuing this strategy because it will result in an additional workload. Give careful thought to what can be achieved, as well as whether time will be available to commit to following through on a regular basis in order to deliver something of value.

E-Mail Groups

Consider starting an e-mail group, also known as a listserv. This is another vehicle for demonstrating depth of knowledge and professionalism to current and potential clients. E-mail groups may be set up to allow for one-way communication from the LNC to the recipients or two-way discussion among all members of the list. An announcement type of list has the advantage of controlled outgoing messages because only the list owner may post messages. This is a convenient and cost-effective electronic method to distribute updates regarding the business, medical–legal news, or newsletters.

Use of Search Engines

Literally millions of Websites are vying for attention. Search engine listing is important, but it should not be relied upon as the only method for people finding the site. Keep in mind that many variables affect how different search results are generated. Learn the most common search engine optimization (SEO) methods. "Integrating search engine optimization into your Web strategy isn't a one-time operation. It is not quick, easy, or cheap (depending upon your goals). However, the right mix of technical and linguistic strategies can help drive qualified traffic to your site…" (Schwartzendruber 2003).

Search engines are not the same as Web directories. Whereas search engines are automated collections of information that users may query for results, a Web directory is a manually created and maintained listing of links to Websites often accompanied by reviews and/or descriptions. Request that the Website be listed in search engines and Web directories; however, because directories are manual, the chance of its being listed there is better.

Also, keep in mind that, within engines and directories, pay-for-performance services promise to list the Website higher in priority than other sites. These sometimes appear as featured or sponsored sites. A visit to Yahoo's Yellow Pages will show that some sites at the top of the list are out of alphabetical order. These sites have paid to be listed higher in priority for improved visibility.

Understanding how search engines work may help demystify the process of optimizing the listing. Most search engines use automated programs for collecting Websites. These programs are referred to as spiders or bots (short for robots). They gather site URLs and analyze them for links to determine the nature of the site. Next, the indexing process commences.

Keywords are tags coded into the heading of the Website. These are not visible to the general user but are picked up by some search engines' spiders or bots. Keywords are also referred to as metatags. Indexing evaluates keywords and, after analysis, ranks a site comparatively to other sites with similar keywords.

Keyword optimization is one of the SEO strategies that may be helpful. Companies like WordTracker (www.wordtracker.com) maintain databases dedicated to compiling common search terms. Be sure to include resource information pertaining to the keywords used on the site. Failing to do so will frustrate users searching for information that is advertised as being on the site.

Use the correct keywords to generate successful search results. Selecting the correct keywords to use has spawned its own set of business specialists and software programs. In addition to WordTracker, sites worth checking include www.site-see.com; www.etrafficjams.com; and www.Webpositiongold.com. Each of these Websites offers a free analysis tool that provides

Table 3.5 Keyword Strategies

Topic	Strategy
Page title	Put in the header code at the top of each page
	Give each page a title that accurately reflects its content or topic focus
Meta tags	Use tag words that emphasize the topic within each page
	Include business name and location in page tags
	Avoid using the same tag words on every page of site
Page text	Make sure that initial paragraph of each page mentions page topic
	Feature text throughout page that repeats topic of that page and of the Website
Links	Place appropriate word links on site
	Request reciprocal links to site from everyone that is linked to
	Look for local business directories that provide complimentary reciprocal links
	Go to local chamber of commerce Website to review benefits of membership

initial feedback on improving the likelihood of the search engine selecting the Website.

Another way that search engines work is through link analysis. This method looks at the links on a Website and how often the Website URL is linked on other sites to assign it a rank. The higher the ranking is, the more improved search engine results will be obtained. Resources such as Alexa (www.autoalexapro.com) and Marketleap (www.marketleap.com) offer free analysis tools. Table 3.5 provides some strategies to try and Table 3.6 offers additional Web resources.

Disclaimers and Copyrighting

Including disclaimer verbiage on the site should be considered for a number of reasons. Adding a disclaimer statement makes it clear that the intent of the site is not to render legal or medical advice. A disclaimer statement may also be indicated whenever one links to another site. Include text indicating that the link is not an endorsement of the other Website's content, but simply a convenience for the LNC site's visitors. The United States Copyright Office notes that the use of a copyright notice is no longer required; however, including it on the Website may be beneficial.

Summary

Establishing a Website for the LNC practice is an important undertaking. It is well worth the time and effort to do a great job. Beyond the purpose of

Table 3.6 Website and Design Resources

Resource name	Website address	Description
Alexa	http://www.autoalexapro.com	Search engine optimization
CNET Builder.com	http://builder.cnet.com	Resources and references
Creating Killer Web Sites	http://www.killersites.com	Articles and references, free stock photo library, site critiques
FrontPage Resources	http://www.library.fullerton.edu/systems/frontpage.asp	Index list of resources for using FrontPage
Good Practices	http://www.goodpractices.com	Website development information
HTML Writers Guild	http://www.hwg.org	Robust online learning
Keyword Generator	http://www.marketposition.com	Keywords tips
MarketLeap	http://www.marketleap.com	Search engine optimization
Tripod	http://www.tripod.lycos.com	Variety of resources for site development
Useit.com	http://www.useit.com	Jakob Nielsen's Website
W3C User Interface Domain: HTML Home Page	http://www.w3.org/MarkUp	Links to current guidelines and recommendations using HTML and XHTML
WDG Tools	http://www.htmlhelp.com/links/validators.htm	Web link validator services
WebDeveloper.com	http://www.webdeveloper.com	Solid, comprehensive site
Web Marketing Today	http://www.wilsonWeb.com	Marketing tips
Web Monkey	http://www.webmonkey.com	Reference site
Web Pages That Suck	http://www.webpagesthatsuck.com	Design help site
Web Position Gold	http://www.webpositiongoldpro.com	Search engine optimization
Web Reference	http://www.webreference.com	Reference site
WebReview.com	http://www.webreview.com	E-zine aimed at designers and developers
Web Source	http://www.web-source.com	Development, tips, and resources
World Wide Web Consortium	http://www.w3.org	Web development resource
WordTracker	http://www.wordtracker.com	Keyword resource

promoting the business, this is an opportunity to educate the public about the profession. Seize the opportunity to demonstrate the value of an LNC within the medical–legal and health care communities by developing an outstanding Website with presence. Good luck!

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Technology and the Office

4

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Introduction

To operate a consulting practice successfully, the legal nurse consultant (LNC) must take full advantage of the available technology, regardless of the current level of knowledge of and comfort with the technology. The LNC must be proficient in applying technology tools in the administration of daily business to establish a best outcome competitive practice that produces a superior work product within the framework of the business plan.

To achieve these goals, the LNC will need to implement the use of technology to gather information presented in various forms successfully, manipulate (edit) the information, and organize it into readily retrievable formats. It will then be necessary to organize the information into user-friendly formats that are ready for dissemination to the business client in an efficient and cost-effective manner. The files will need to be maintained in an organized system of work processes in the office environment.

This chapter provides essential information about how to best establish a consulting practice that uses features of current technology.

The Office Design

Planning

The LNC should assess the need for business office space within the framework of the financial plan. Space needs are ongoing requirements.

Assess Need

Determine which layout of furniture will provide an ergonomic environment specific to the user's needs and with the goal of preventing the development of repetitive-use injuries or exacerbation of current disabilities. A proper ergonomic environment will need to be planned for in advance to avoid unnecessary costs later.

Financial Plan

Establish a budget and work within this plan for the most successful business outcome based on current needs, with anticipation of and planning for eventual future needs. Plan for items that *will* be needed in anticipation of the inevitable growth in a successful practice. Perform the research and make decisions in advance for these future purchases. When that purchase is suddenly imperative, the plan is already in place for the products and options that will be purchased and the vendor who will be used. Planning decreases stress and makes the growth of the business more enjoyable.

A cost/benefit analysis related to the decision to purchase or rent needed equipment or technology will guide the LNC in the decision of which services to provide to the attorney client and to plan for specific phases of the business — i.e., new, intermediate, or experienced business owner.

Some services that the LNC is planning to provide on a routine basis may require rental of necessary equipment until the frequency of the services justifies the purchase of costly equipment. For example, the LNC plans to provide mediation and trial presentation services to the client. The necessary equipment will include two notebook size computers that mirror each other and are loaded with the trial presentation software and attorney work product, as well as an LCD projector with the necessary accessories, such as a projector stand, appropriate cabling, projector screen, etc.

In preparation for various situations, the LNC must provide the equipment for unexpected events. For instance, a court clerk in the federal courtroom advises the LNC that the court has everything and that the LNC only needs to bring the notebook computer and plug it in. However, upon arrival, the LNC learns that the projector is not working in the assigned courtroom. Preparation for these situations will require that the LNC have within ready retrieval an LCD projector with sufficient lumens for a large courtroom with bright lights, screen, etc. Such services as these will be a substantial business expense whether the LNC chooses to own or rent the equipment.

Rental of some equipment — for instance, an LCD projector — can cost several hundred dollars per day. It is not usually feasible to rent the computers because the specific proprietary software needed may not be loaded on the rental computer. In addition, attorney work product cannot be loaded onto the rental computer hard drive due to the inability to erase the information totally from the hard drive. Another consideration is that operating systems and computer set up may be different and will require time to be specifically configured for the LNC's use. The cost/benefit of providing various services in the design of the financial plan must be considered.

The LNC will want to:

- Maintain the investment made in equipment, technology, and furniture and be cognizant of warranty periods.

- Have backup printer and copier cartridges on hand for that last minute project.
- Have a variety of supplies for unique needs, such as specialty paper and replacement parts.
- Know when the subscription services will expire.
- Plan for the upgrades necessary to remain competitive.

The Process

It is absolutely necessary to attain a level of knowledge regarding equipment, technology, and furniture so as to keep the consulting practice functioning at a high level of efficiency (see Figure 4.1). A commitment of time to achieve the level of knowledge necessary to manage the practice competently should be considered part of the routine of the consulting business. The achievement of an efficient working office environment is not an end goal, but rather an ongoing process. Although the LNC will have an ultimate goal of establishing the functioning office, the office will always be in a state of change and will need reassessment, maintenance, and ongoing planning.

The LNC should anticipate the need for necessary software and hardware upgrades. Part of the process is to make a continual assessment of what is working well and what should be eliminated. The consultant should be aware that some purchases will earn their investment over and over, but others will be considered a loss. The goal is to plan for more of the former and end up with fewer of the latter categories. The consultant should not be dismayed by the occasional purchase that is not as useful as was anticipated; this is as much a part of business as any other aspect. Careful planning will definitely have a positive impact on the successful creation of the professional office.

Designing

In general, when choosing the location of the office space, first of all, consider the flooring for ease of movement of a chair, for static qualities, and for dust. Carpet has the potential to create a lot of static and dust. If the floor is carpeted, chair mats can be used and antistatic spray will minimize static. Static will destroy technical hardware and is an important consideration. Humidifiers in the area will help decrease static buildup during dry periods.

Know your equipment
Know the features
Know the value that it will bring
Know the limitations
Know whether it is compatible
Know whether it is upgradeable

Figure 4.1 A List of Must-Dos

Consider the color of the ceiling, the number and location of electrical outlets, and ease of installation of cabling for cable modem and phone lines. Consider the proximity of what the nearby space will be used for; will the room be exposed to high traffic, distractions, isolated, or convenient?

Plan the office space to accommodate the equipment, allow for easy access to a clear desk surface area for writing and manipulation of papers and books, and have peripherals (printers, fax machines, and scanners) within easy reach. Alternatively, set up a workstation a short distance from the desk to force occasional rising and walking. More specifically, the workstation set-up will need attention to the lighting, seating, desk, and the equipment.

Chair

The following are desirable qualities of an office chair:

- Easy rolling — consider the flooring in the planned or current office and the ease of the chair in moving on that surface. Chair mats can help or, for a more firm foundation, a 4 × 8 piece of plywood can be purchased and covered with a variety of flooring options. This provides a large rolling surface for sometimes one third of the price of an upper-end chair mat and a much firmer foundation.
- Opt for adjustable lumbar support.
- A chair can have a waterfall edge or allow the forward edge to downslope, thus preventing unnecessary pressure spots on the posterior legs.
- Height and depth of the seat, as well as arm height, should be adjustable. It is often best to lower the arms and not get into a habit of resting the arms on the chair if support is not necessary for an injured or sensitive shoulder.
- Footrest — some creativity can provide ergonomic posture and save on the budget by considering the choices of a purchased footrest. A box or several boxes of various heights may be stored and can be covered with a rug to provide multiple levels for the feet underneath the desk.

Input Devices

These include keyboards, mice or trackballs, writing and drawing tablets, and voice activation software. Mice are available basically in two styles: (1) a mouse with a roller ball, referred to as a "trackball," that uses the thumb predominantly; or (2) a mouse that moves as a unit to navigate the interface. This type comes with or without a cord and uses an optical reading light or has ball-shaped wheels on the bottom surface to send location data. A cordless mouse uses a wireless device plugged into the computer. The cordless or

wireless keyboards and mice eliminate the wire between the device and the computer, giving the user more freedom of movement. Choose what is comfortable. How it feels with repeated use is very important. These input devices are very affordable and are critical pieces in the daily use of a computer. When using these devices, consider the position of the hand and palm when they are resting on the desk surface. Gel pads are available and will very comfortably place the hand and wrist in a neutral position.

To prevent pain in the hands, wrists, arms, legs, and back, consider investing in a keyboard system with an articulating arm or a sit/stand keyboard tray with adjustable height monitor. A split keyboard may not feel comfortable at first, but give it a chance. Keep an eye on the position of the arms, wrists, and legs, as well as posture, to assure a natural and comfortable alignment.

Other input devices include voice recognition software and drawing or writing tablets. These alternate devices require some set-up time to recognize the voice and handwriting, but are options to consider. Keep in mind that some time will be necessary to proofread any voice recognition or handwriting recognition until an established level of accuracy is confirmed.

Document Holder

Some great improvements have been made in document holder designs. They can be positioned in the empty space between the keyboard and the monitor. They can hold very heavy documents or books and be positioned below the level of the desk for efficient use of valuable "real-estate" desk space. This position allows a direct visual line rather than turning the head towards the reference — thus preventing strain and saving time spent in relocating the place on the page.

Monitor Position

Position the monitor so that the neck is neither hyperextended nor flexed. The position of the eyeglasses should not require the reader to look over the top of the glasses or lift the head (hyperextending the neck) to look through the bottom. A visit to the optometrist may be necessary to obtain a pair of "computer" glasses.

Work Surface

A table can be elevated using piping. The pipe should be cut a few inches in equal lengths. The legs of the table are placed into the pipe pieces to provide a taller work surface to use while standing.

Shape of Desk

The shape of the desk will contribute to an efficient workflow. A U-shaped desk or two desks set up parallel to each other are very desirable to allow the LNC to move easily from one work station to another.

Lighting

The LNC will want to have two types of lighting for the office: task lighting and ambient lighting. Give consideration to this when placing the furniture and planning around available electrical outlets. Plan for the lighting prior to the placement of the larger pieces of furniture with equipment in place. Consider that lighter color ceilings will bounce light back and darker ceilings will absorb light.

Acquisition of Office Technology

Gathering Information

To be able to gather information, the LNC will need to decide which hardware (the equipment) and software (the programs) to purchase. In so doing, there will be multiple small decisions.

If a computer has not already been purchased for the business, the LNC will need to decide where to buy the first computer. If a computer is already showing signs of needing an upgrade, it will be necessary to determine the need to upgrade or obtain a new system. The nature of the warranty should be considered. For example, a 4-year warranty may be unreasonably long. The warranty for a laptop should be carefully considered to determine whether it would cover physical damage. Consider which operating system is necessary and whether to upgrade the operating system (i.e., Windows XP, etc.) These are some of the considerations in the establishment of the office environment.

The Hardware

The computer system is the heart of an efficient office. The computer will need an operating system in order to function. A decision regarding the operating system is usually an easy one. The operating system comes with the computer as a "bundle." Price will determine which operating system will be bundled with the computer. The difference is a "home" edition vs. a "professional" edition of the operating system. Usually, the professional edition of the operating system will be geared toward the business environment.

If the LNC already owns a computer and the operating system is older, careful consideration is needed in deciding whether or when to upgrade the

operating system. This upgrade may not support features in software programs upon which the LNC has come to depend and may even be totally incompatible with some of the programs. Research the new "features" of the operating system upgrade; some features that existed in earlier versions may have been removed. It may be more judicious to wait until it is possible to upgrade the software simultaneously. Be sure after an upgrade to test all software and peripherals such as scanners and printers within the period of time that may be given for return or exchange.

Windows is the operating system of the majority of nongraphics-oriented businesses; however, Macintosh now has many user-friendly, cross-platform compatible file formats, such as Microsoft Power Point® and Microsoft Word®. Macintosh lovers can have their file formats and share them with Windows users too! It will take about the same period of time to learn either operating system. The LNC who is a Windows user but has a desire to use the Macintosh can learn the new interface without much difficulty. Macintosh has some superb features, such as a more stable environment and superior graphics support for video- and image-editing needs. Some Macintosh users go for weeks without needing to reboot their systems.

Other factors to consider are the drives; memory; speed; video card; audio and input choices for wireless cards; memory sticks; external monitors; USB devices for handhelds; and telephone lines.

Drives

- Internal hard drive — buy as much space, referred to in gigabytes, as is affordable.
- External hard drive — when the space mentioned in the previous item is used up, the external hard drive often preserved for the backup system can be partitioned for daily use and backup storage.
- CD ROM — minimally, a CD drive is necessary to install software and read from CDs received with transcripts and other files.
- CD RW (read and write CDs) — it will be necessary to share files via CD. This is currently the most common method of file sharing and file storage.
- DVD RW — this is a luxury and not necessary unless performing video work, such as "A Day in the Life" or settlement video work.
- Floppy — this is almost extinct. The LNC does not need to have a floppy drive unless files are received in this format from clients. At that time, an external floppy can be purchased. Most files that would fit on a floppy disk can be e-mailed. This type of drive is now often an option on new computers.

Memory

Memory is the internal space used to hold information temporarily as it is processed. It is the space that software programs use to function. If the LNC is multitasking several programs at the same time, more internal memory or RAM (random access memory) may be needed. Memory sticks are available and other memory devices that can be carried on a keychain if needed. Memory sticks often will work in video cameras and can then be inserted into laptop computers for uploading of the images.

Peripheral "Plug and Play" Devices

A "plug and play" device can be plugged into the computer and used without rebooting. This is also referred to as "hot swapping." Most often, new peripheral devices require shutting down the computer, connecting the device, and then turning the computer back on. Such devices include the keychain hard drives and memory sticks, Web cams, and keyboards and mice.

Speed

Speed refers to the processor, the heart of the computer, or the "motherboard." This needs to be fast enough to support the programs that will be running. Different types of processors are available, such as Intel®, Celeron®, and other lesser known names. The LNC should consider getting as much speed, measured in megahertz, as is affordable as the business grows. The addition of more memory and more programs will need to be supported by the speed of the computer's processor. If the processor cannot be upgraded, a new computer system will be needed.

Monitor

The newer programs are now arranging the "real estate" of the monitor interface space. This leads to the ability to set up specific preferences with toolbars, drop-down menus, etc. so that a monitor does not need to be the most expensive feature of a computer system. A flat panel has a different aesthetic appearance than does a CRT (the large boxy monitors). Flat panels function like CRTs, unless graphic editing and video editing are a main income producer for the business. In that case, the LNC needs to be concerned with color management and lines of resolution.

Network

A network is needed once the LNC has more than one computer. It will be most useful to network the computers and peripherals together. The network is something that an individual can research and set up via help files. If the network is established while the computers are still under warranty, the LNC can have the technical support services. These services are provided for a

defined period of time as part of the purchase of the computer to assist with any difficulties that might arise. Another option for establishing a network is outsourcing this service to be set up by a computer consultant. The need for the services of a consultant depends on how large a system is needed to be networked. An individual can connect two or three computers to a network with a few hours set aside to set up the cables and the software settings. A computer consultant best accomplishes networking more than a few computers.

Wireless Connection

A wireless connection will be used most often with a laptop computer. A wireless "card" will be internal or external. An external card fits into a slot on the side or back of the computer and is also called an "Ethernet" card. The value of this is to be more mobile when working as an LNC and to be able to connect to other wireless networks while traveling. Wireless connections permit the LNC to complete work when not physically present in the office. Security issues must be researched for the best methods of protecting the computer from other wireless users.

Peripherals

Peripherals are any equipment or device "connected" to the computer that is not part of the computer. The most common peripherals include printers, scanners, and copiers.

Printers come in all shapes and sizes. Some printers are a combination of scanner, printer, and fax machine. The LNC should consider that, if the fax machine malfunctions and it is necessary to have it repaired offsite, the printer and scanner are also leaving the office. Printers are inkjet or laser. Lasers are more expensive, better quality, and usually faster; inkjets can be cost-effective color printers. A laser color printer can be purchased, but would be considered a top-end item. Determine what the cost will be for replacement cartridges and toners. Where can they be purchased? Will they need to be shipped or can they be purchased in bulk at the local warehouse superstore? Can the cartridges be refilled with a refill kit? What quality is needed? Is special paper recommended? Usually, the paper is an important feature in the output quality of a particular printer. For text documents, laser printers are fast and of high quality. An inkjet can be used for color and document printing and can be purchased for a reasonable price.

A scanner is desirable for imaging documents for use in a report or presentation and for optical character recognition (OCR). A scanner allows the incorporation of images into a new document, such as a medical record chronology. Any typed report can be scanned with the OCR software that usually comes with the scanner. The user converts the scanned information

into a simple text file. This can then be incorporated into the medical record chronology or other reports, thus saving the writer from retyping those words. Many of the current programs are far superior to what they were even as little as 2 years ago and can save many hours. To verify accuracy, it is necessary to compare the scanned document to the original. Because the LNC will usually be reading these documents, this also saves time. The scanner that has an autofeed feature will save much time. The scanner can double as a fax machine.

A fax machine is usually reasonably priced. Early in the business, a fax can be sent and received with the software fax modem programs incorporated into most operating systems. The printer can be used to print out faxes and the scanner to send faxes. A freestanding fax machine is helpful when it is necessary to fax many pages. Also, research what type of ink is needed and where the cartridges can be purchased. Keep a spare cartridge on hand.

A copier is a necessity in the office environment in which new technology has created an expectation of speedier service. A fax machine can work as a copier for small jobs. The scanner/printer can be used to make copies.

The LNC should plan on shredding sensitive materials on site or using a shredding service. Small office shredders are sufficient for a few pages at a time.

The value of voice recognition software is the opportunity to allow input of information without the necessity of strictly using a keyboard. This software is used in conjunction with keyboard entry but does not completely replace it. Plan on spending some time on training the software. Be aware that persons with certain accents may have more difficulty training the software to recognize certain words and, therefore, proofreading is an absolute must. A typist will almost always know when an error was made; however, with voice recognition, it is possible for the software to interpret the word incorrectly. Proofreading for accuracy is imperative until the software can be consistently relied upon.

The choice of answering machines or voice mail is often based on cost because most answering machines can be accessed from remote sites. The preference to screen calls is sometimes a determining factor. The LNC can choose to pick up an urgent call when the answering machine is receiving the message and it is set to speakerphone. With voice mail, this is not an option.

Speakers are usually incorporated into the computer system. Media players (Windows Media Player, Real One, and others) are necessary to play the audio and video files. These media players are "freeware" (no cost). Upgraded media player versions with expanded features are available for a charge.

The familiar "Web cams" are still sending the visual signal a little more slowly than they are sending the audio signal. The value of this communication

method must be individually determined for communication that is mostly audible and not visual in nature. Video conferencing suites can be rented for occasional use. If this will be a common method of communication with clients, a professional set-up should be researched for best quality.

Projectors are great for giving presentations to and for clients. A projector should be purchased when the LNC is in the position of presenting often. Conversely, a projector can be rented from a hotel or a local rental company. These rental rates are still quite costly. If this will be a commonly used piece of equipment, a purchase would be wise. The important aspect of selecting a projector is lumens. The higher the lumens are, the stronger the projected image will appear in well-lighted rooms. Projectors are becoming lighter, brighter, and less expensive every few months. The longer that the LNC can wait to purchase a projector, the more dollars will be saved.

Handhelds (also known as "palm pilots") are very common and have the ability to carry a tremendous amount of information in a very small place. The downside is that it is tedious to enter information into them. LNCs can enter most of the information in the desktop computer and download data to the handheld computer during "HotSync" operations. HotSync is the name given to the exchange of information between the desktop or laptop and the handheld device. As with desktops or laptops, operating system, memory, and features need to be researched. Palm Operating System offers many more software options than the Palm PC operating system. Memory sticks are available and can offer a tremendous storage capacity for references. The handheld can be used for an alarm system — reminding the LNC of upcoming events. Some handhelds are incorporated into phones and function via cellular service to receive e-mail; have access to the World Wide Web (for a subscription fee); have GPS (ground positioning satellite) signal; and other services. Of note, as of December 2005, all new cellular phones sold will have a GPS signal emitted to allow locating of the device.

Manipulation and Editing of Information

At a minimum, the LNC will need a word processor, an Internet browser, an e-mail client, and an antivirus program. The two most popular word processors are Microsoft Word and Word Perfect®. The more commonly used word processor is Word (previously known as "Word for Windows"). Microsoft Power Point is helpful as services expand. This program enables one to prepare presentations for attorneys desiring slide presentations for mediation and trial. Microsoft Excel® is useful as a database program for preparing a medical record chronology. The LNC should also consider use of a database for maintaining

information about cases, clients, expert witnesses, vendors, and others. These contact management programs should be easy to use and customize.

Third-party programs are available as well for the creation of the work product. The program used to obtain information from the Internet is referred to as a browser and several are available. One is usually included with the computer-bundled software package as well as the e-mail client. Browsers will be necessary to perform research and communicate electronically.

To share the work product files safely and to maintain the labor-intensive formatting of the appearance of the document, it is recommended that Adobe Acrobat® be used to save the files in the native Acrobat format (PDF — portable document format) prior to submitting to the attorney. The LNC can refer the attorney's paralegal to the Adobe site for the free Acrobat reader so that the paralegal can read and print the work product if the law firm does not own Adobe Acrobat. The file preferences can be set for desired security levels to prevent any editing by the receiving party and thus the formatting as well as the content can be preserved as submitted.

For the LNC who would like the attorney client to have access to the work product while it is being prepared in order to collaborate on the details, virtual workspaces are available for an annual subscription fee. The workspace substitutes for the traditional office meeting, allowing the user to obtain and provide documents and track key dates. One company offering this is West Workspace. A demo of this service is available at http://products.findlaw.com/workspace/index.html. WinZip is useful for compressing the size of the files for sending via e-mail or for conserving storage space on the hard drive.

Accounting programs such as Quick Books can be used to assist in the maintenance of the financial functions of the business. More complex and comprehensive programs are available to challenge the LNC's repertoire of skills. Trial presentation software programs such as Trial Director® and Sanction® allow interactive presentation of multiple case exhibits, zooming, highlighting, presentation of digital video transcripts (video with synchronized transcript scrolling), and many other presentation features. Case management software such as Concordance® and Summation® allow the user to summarize the documents, add notes to transcripts, perform real-time transcript viewing, and search for key terms. Visual timeline software such as Timemap® and SmartDraw® is used to create a timeline of events using a visual format. The LNC who would like to offer specialty services should investigate these feature-rich programs.

An image-editing program will be needed when a report that includes images is prepared. These programs often come packaged with printers and scanners and will be adequate. Other more expensive and feature-rich programs

are available, such as Paint Shop Pro® and Photoshop®. Another image-editing program that is part of a suite of programs is Microsoft Picture Editor®. It is located in the Microsoft tools part of the Microsoft Office® package and is a very useful program.

Recognize that as business grows and more computers are needed, licenses to install software are usually for a single user. If the license use is not clearly stated with the software package, verify the use restrictions with the vendor. Each new computer may need its license for the software. Some vendors will give registration for licensed use of a single purchase on multiple computers used by the same person, such as a desktop and a laptop used by a single user. Compliance with licensing restrictions is a necessary cost of doing business.

Storage, Retrieval, and Protection of Information

As previously discussed in this chapter, the storage of the information that the LNC receives is of primary importance. It cannot be stressed enough how important it is to back up the virtual office files to a secondary storage device. Some formats for secondary devices include tape backup; CD ROM or DVD discs; external or an additional internal hard drive; memory sticks; and secure Web space that can be rented.

The protection of the office files from attack by a virus or from uninvited access to the computer can be accomplished with firewalls and antiviral protection. Firewalls come in two forms — hardware and software. A router (the hub to which the computer will be connected when a cable modem or DSL service is established) will act to prevent most people from accessing files uninvited and is considered a firewall. McAfee® and Norton® offer software versions of a firewall. When these are combined with the use of the router, antivirus programs, and certain settings made to the computer, the LNC will be responsibly providing the necessary security for business information. The antiviral software will require a subscription to be able to routinely download the recent viral definition files. These definition files are updated from several times per month to once monthly, depending on the service.

For protection from physical threats such as lightning and other electrical problems, a surge protector from a company such as APS BackUPS (with a battery and insurance policy as part of the purchase) will give the user a few minutes after loss of electricity to finish up the work and save it and will protect the equipment from surges.

Warranty policies on equipment are well worth their prices when a problem arises. Carefully research what is actually covered and whether the office is in a covered location. The service technician may not be available when the service is needed. Service may only be covered if the equipment is

brought in or shipped in and time frames may not meet the business needs. Planning for times of critical needs will be prudent. The LNC should investigate the options before the need arises by calling the technical support department before making a purchase and asking several different technicians about what the policy covers if the computer stops functioning. Many times, the LNC will be expected to remove the hardware and ship it, and replace the new hardware and set it up again once installed. Occasionally, a computer company will require a credit card number prior to shipping the replacement part as insurance on receiving the defective part back.

Maintenance of Office Technology

- Analyze warranty terms carefully and know the policy and its limitations before it is needed.
- Record the expiration dates on warranties and subscription services on a calendar.
- Anticipate the need for upgrading memory, hard drive, and processor after about 3 years of use. As additional programs are added, more speed and memory will be needed.
- Check first with the software manufacturer regarding any new drivers, upgrades, and patches before changing existing software or hardware.
- Do not block the fan of the computer; it cools the processor on the motherboard and helps to maintain its useful life.
- Dust accumulates inside the computer case. Plan to vacuum inside the computer case every few months.
- Keep the office environment a dust-free and climate-controlled area as much as possible. Nonfiber flooring is best to minimize dust from fibers. Vacuum the keyboard and small openings with small attachments to a vacuum. Compressed air will force dust further inside. Every 2 weeks vacuum and dust equipment, wires, and desk behind the equipment.
- Use specific manufacturer-recommended cleaning solutions for monitor screens. If within recommendations, here are a few tips for the two most common types of computer screens.
    - Generally, plan to clean the monitor during a time when it will be turned off. Although it is not necessary to turn the monitor off to clean it, it is a good idea. The smudges and dirt are better visualized when the monitor is off and damage is minimized if the electrical components inadvertently get wet. If liquid is ever dripped into a monitor, turn it off immediately and allow it to dry completely before turning it back on.

- CRTs are the big chunky monitors and they have a glass screen, which is easily cleaned. An important point is to avoid spraying any liquid directly onto the screen. Instead, spray the cloth with water or a mild window-cleaning solution and then wipe the screen. Use the same damp cloth to clean the entire monitor case as well. Never open the monitor casing, which contains electric voltage that can cause a shock.
- Flat panel LCD monitors are often called flat panel monitors because they are flat and thin. These are the types of screens used in most laptop computers, and they are also becoming very popular for desktop computers. LCD screens are softer than CRT glass screens, so they require some extra tender loving care. Keep fingers and sharp objects away from these screens, which are susceptible to damage and scratches. Use a soft, dry cotton cloth to remove fingerprints and smudges from the screen. If this does not completely remove the dirt and smudges, use a small amount of isopropyl alcohol or vinegar on a cleaning cloth that has been dampened with water. Spray the liquid on the cloth and never directly onto the screen. Do not use paper towels on an LCD screen because they can scratch the screen. Never use ammonia, ammonia-based cleaners, or other strong cleaners that can cause the surface to yellow and become brittle.
- A special cloth dedicated to use on the LCD screen is recommended. Do not pick up an old rag because dirt particles in the rag can scratch the surface of the screen. The best cleaning method is to stroke the cloth across the display in one direction, moving from the top of the display to the bottom.
- Static is a formidable enemy to the health of electronic equipment. Touch the metal knobs of the door or some other metal object before touching any computer component upon entering the office in order to discharge any static built up. Wear shoes with soles that do not create static. If a buildup of static occurs, use antistatic spray, put some humidifiers in the office, and, most importantly, recognize this is a true threat to the equipment.
- Do not eat or drink near the computer; if a spill occurs onto the keyboard or other equipment, turn it off and let it completely dry before turning it back on. Recognize that a spill into a laptop can destroy the machine. Place a small table on the floor next to the desk for drinks. Use covered drink containers. Eat away from anything that would be affected adversely by food or drinks that could be spilled or dropped. Create the routine of taking a break away from the office to eat meals.

Organization and Maintenance of Physical Files

Always perform organization and maintenance of medical records within the HIPAA guidelines. Please refer to their Website for guidelines (http://www.cms.hhs.gov/hipaa). Once the files are received, the LNC should document precisely what was received, organize the files according to the attorney client's preferences, and then scan the documents. The benefits of scanning are several. Long-term maintenance of files takes up minimal space. If the files are misplaced or lost, a copy is easily retrievable. If a program is used to create the chronology, an attached image of the particular document can be provided. The cost for scanning is comparable to copy charges. Scanning provides a permanent copy of what was received and when. Have the document Bates numbered at the same time at which records are scanned to be most cost and time efficient. An extra copy with the Bates numbers, called a blowback copy, can be obtained from the scan house.

When a file is closed, the records will need to be returned or shredded. If scanning is not part of the policy of the business, some method of storage will be needed in case the documents need to be retrieved. If the policy of the business is to maintain a hard copy, this will over time become cumbersome. Documents can be returned to the attorney or destroyed when the case is finished. This should be discussed with the client. It is recommended the LNC obtain a decision in writing. This can be accomplished by faxing a request to the attorney to verify return or disposal of records. The form can be faxed back with the appropriate box checked. This will protect the LNC in the event that a question arises about the status of the records.

Physical or computer files should be available for 7 years. (They may be important if a legal malpractice suit against the attorney arises.) The LNC should make it a practice to store computer files in a safe manner, such as burned into a CD Rom and kept off site, until the 7 years has passed. Transferring the files off the computer hard drive will conserve space.

Summary

Careful selection of computer equipment increases the productivity of the LNC. Changes in technology will continue to expand the available choices. Routine maintenance of equipment will help to ensure that vital tools are available when needed.

Additional Reading

Greene, T.C., *Computer Security for the Home and Small Office*, 1st ed., Apress, Berkeley, CA, 2004.

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Working with Subcontractors

5

DEBORAH D'ANDREA

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Introduction

The premise of this chapter is that an independent legal nurse consultant (LNC) will ultimately need to hire someone to assist with the workload. The chapter begins by defining and explaining the term *subcontractor*, exploring when the business owner should hire one, and reviewing the interview process including negotiating, training, and supervision of the subcontractor. A general review and explanation of the IRS rules and regulations pertaining to subcontractors is included. The chapter ends with a summary of tips and guidelines.

Defining Subcontractor and Independent Contractor

This chapter explores working with temporary assistants whose services are required on a case-by-case basis; they are not full-time or part-time employees of the company. Workers fall into several general categories:

- Temporary assistants are hired from an agency or company that provides temporary workers for many businesses. The independent LNC enters into a contract with the agency to provide services. The LNC

defines the services and the agency charges for the services of each temporary employee supplied to the company. The agency has the right to control and direct the worker's services. The LNC pays a fee to the agency for providing this temporary worker and pays the worker's salary.

- Independent contractors or subcontractors are workers used on a temporary basis. The difference is that these workers are not hired through an agency. The terms independent *contractor* or *subcontractor* can be used interchangeably. Many LNCs do not like to use the term subcontractor because this is generally a term connected with tradesmen. For example, the general construction contractor hires subcontractors such as plumbers or electricians to do sections of the contracted work.

For the sake of continuity, the term subcontractor is used in this chapter.

If the LNC's ultimate goal is to grow the business or consulting firm, one of the easiest ways to do this is through the support of subcontractors. It is often a difficult transition from a *practice* to a *business.* In a practice, the LNC is involved in the marketing and sales. When the LNC obtains a client, he or she does all the work. In a business, the LNC manages relationships with clients and oversees subcontractors. The LNC business owner may continue to provide services, including working on specific cases. As a consultant who owns a business, the LNC is multitasking and may be handling more than one project at a time. The experienced LNC may take the initiative instead of waiting for specific instructions or directions from clients. This topic is covered in more depth in Chapter 10.

Business owners want to maximize profit by minimizing overhead. This usually means that no full-time staff members are employed. Hiring a subcontractor is defined as hiring talent on a situational or project basis. Using the local printing franchise to have copies made or to have reports bound is not subcontracting, but merely using a retail vendor. Hiring a graphics artist to design the layout of a client's demonstrative evidence, an instructional designer to produce a policy manual or training program, or another LNC to analyze a case and write a conclusive report constitutes using the services of a subcontractor. It is common for a business owner to use a subcontractor instead of hiring permanent staff for short-term work; expert skills are required for a finite period, a one-time-type project, or unknown workloads.

A perceptive business owner may conclude that subcontractors are needed to fill a multitude of job functions. These jobs may be clerical, have technical functions, or assist in developing cases in which the LNC business owner has no clinical experience. Using subcontractors is an efficient way to allocate resources and allows the LNC to handle a temporary increase in the workload

without taking on the unnecessary burden of hiring permanent employees. This avoids a heavy payroll burden after the work or project has been completed and the employees are no longer needed. The LNC may also benefit from the use of subcontractors as he or she begins to understand the nuances of those cases through the specialized knowledge of the subcontractor.

A subcontractor maintains a separate business and undertakes a contract from the business owner or contractor. Subcontracting is also known as outsourcing. Subcontractors work on projects that the business owner is unable to complete. The owner is ultimately responsible for the completed work product. This is addressed later in the chapter when IRS regulations are discussed.

The art of delegating is one of the most difficult skills to learn and to use. It is frightening to think of entrusting important work to others. Until a pattern has been set, all LNC employers dread entrusting others to meet an important deadline. However, delegating tasks and specific jobs to others has many benefits. One of the most important is that this allows the owner the free time to work on another project. Using a subcontractor allows the LNC to expand the business by taking on more clients or by working on multiplaintiff cases. It also allows one to provide services for cases outside the area of expertise.

One of the reasons why some people do not want to delegate is a lack of trust in the subcontractor's ability to do the job correctly in a timely fashion. The LNC business owner may feel that things are out of control. In reality, the owner is in more control because he or she has a greater effect on the outcome. The owner should plan to hire subcontractors prior to needing their services — prior to the crisis time. The burden of a deadline is not the prime time to be searching for someone who is responsible and can handle the case requirements. Building a team of competent subcontractors is a fantastic way to allow the business to grow. The intent of using subcontractors is to save the company money because a subcontractor's time is usually less costly than the owner's and definitely less costly than that of full-time employees.

Many routine tasks can be and should be delegated because this creates time for the owner to do more important things. To truly delegate, one should allow the subcontractor the chance to complete the assignment without micromanagement.

It is wise to err on the side of using a subcontractor as opposed to falling behind, not maintaining deadlines, or feeling pressured and overwhelmed. Utilizing a subcontractor when the LNC is not under unusual stress creates more interaction and a stronger relationship with the subcontractor and ensures that the extra talent is available when the workload does increase. By using the subcontractor early in the project, the LNC is investing money to make money.

Hiring Principles

Hiring a subcontractor allows for maximum flexibility. The LNC owner should start with a subcontractor to assist on cases that supplement the owner's skills. The advantage is in getting immediate help in an area.

A drawback to using the services of a subcontractor is that it requires obligations of additional bookkeeping and record keeping — for example, the owner must include proper bookkeeping for tax purposes (to be discussed later in this chapter). The owner is responsible for maintaining employment or personnel records. The owner should develop a tracking system that identifies documents or medical records given to each subcontractor, the date, and expected date of project completion. The owner is responsible for training the subcontractor.

The LNC owner is responsible for the quality of the subcontractor's work and, in some instances, the quality of interactions with the clients. The owner needs to consider carefully whether the services of the subcontractor will stay in the background. In this model, the owner is the only person who has contact with the clients. If the owner does permit the subcontractor to have contact with the clients, the owner will require a noncompete contract. This type of contract will be addressed later in this chapter.

Selecting people who can provide specialty services to the business is as important as identifying potential clients. Hiring a subcontractor is a detailed and time-consuming activity. The owner who is unwilling to invest the time and energy required will never develop the business effectively. In essence, the business' future is left to the trial-and-error method of random people selection. The owner must invest all the time necessary to be comfortable that the subcontractor chosen is the right person for the project or job.

Picking the Right Person for the Right Job

Finding the right subcontractor requires careful attention to detail. A business owner must be a good organizer, have the ability to plan, and look for continuous improvement. The Japanese call this *kaizen* (pronounced ky'zen). This means or suggests a relentless quest for a better way. Kaizen challenges one to do better than one did before. To accomplish this, the LNC must understand what the market or clients want and then be prepared to give it to them. In essence, the LNC must identify and satisfy client needs. Hiring good subcontractors can accomplish this goal.

Before beginning the interviewing process, it is essential to identify the traits, performance objectives, and skills required to complete the various projects in a cost-effective and timely manner. Selecting a competent and experienced subcontractor is an important step. Taking the time to investigate, explore, and hire responsibly will ultimately save time and money.

Ideally, projects will only need to be done once because they will be done correctly the first time. Essential reporting and specific projects will be completed in a timely manner. Finally, the LNC and the client will be satisfied with the outcome.

- The LNC should look for a subcontractor with the education level, credentials, and years of experience relevant to the type of subcontracting expertise needed. Successful subcontractors and business owners or consultants strive to become the most knowledgeable in their area of expertise. As a general guideline, a subcontractor should have a minimum of 5 years of clinical nursing experience.
- The LNC should look for someone who has complementary skills. Identification of complementary skills is based upon assessing the owner's skills and expertise and determining the skills and expertise needed from subcontractors. Match the task with the subcontractor. For example, an LNC with no pediatric clinical experience may obtain many potential pediatric cases and will need to augment the company's resources with a subcontractor who has extensive pediatric experience.
- The LNC should be prepared to supervise. Take into consideration how closely the LNC will need to keep tabs on a project and on the subcontractor. All projects require regular monitoring, especially in the early or beginning stages.
- The LNC should test the waters to make sure that the person is the correct person; this is planning ahead. Use the services of a subcontractor for a job or assignment prior to a crisis or deadline project. In essence, this is a way of making sure that the subcontractor is able to complete the job at hand. Start with the small cases and give the subcontractor the chance to prove competence.
- The LNC should plan ahead, look at upcoming projects, and be able to take on new work assignments or projects. Having specific subcontractors can provide the ability to advertise and market more extensively than would be feasible if only the LNC were producing the work product.
- The LNC should know who is doing what. Keep a written or computer log of work assignments and deadlines. Set realistic deadlines that the subcontractor will be able to meet. If possible, sit down with the subcontractor or speak on the phone to review the project in detail. Specifically ask the subcontractor how long it will take to complete the project or provide a number of hours that the subcontractor should not exceed without contacting the owner.
- One of the biggest sources of nightmare for the owner is the subcontractor who vastly exceeds the agreed upon hours and then demands

payment. The LNC owner and subcontractor can alleviate this problem by mutually defining and agreeing upon the number of hours that will be spent on a specific case. The LNC owner should require that the subcontractor contact the owner if the hours will exceed the agreed upon number. The document illustrated in Figure 5.1 represents a means to help eliminate this potential problem.

Once a subcontractor has been hired and trained, try to keep that person. One should treat the subcontractors as one would like to be treated and work to build a personal relationship with them. Keep in mind that a subcontractor can be a good source of leads. The bottom line is that the subcontractor and the owner need each other. The team is able to produce the highest quality work possible; ensure the customer's happiness, thus creating repeat business; keep overall costs down; and, ultimately, increase profits. An LNC business

DATE: _____
FROM: _____
TO: _____
RE: _____ (case name)
Type of case:
Screening for malpractice
Medical summary
Chronology
Literature review
Product liability
Instructions:
If using our Fed Ex account, please send by economy service. Do not send Saturday delivery without prior approval.
Number of hours quoted to attorney: ___ hours.
Do not exceed ___ hours without calling me.
Return by_____.
Return with two copies of supporting literature? Yes_____ No_____
Written report (send printed report and disc)? Yes_____ No _____
Additional comments:
_____
_____
_____
_____
_____
_____
_____
_____

Source: Courtesy of Patricia Iyer, Med League Support Services, Inc.

Figure 5.1 Subcontractor Cover Sheet

owner may wish to offer the subcontractors an incentive such as a 10 to 20% finder's fee for any new business generated to the firm.

Profile of a Subcontractor

The following are common personal characteristics of successful subcontractors. Not every subcontractor will possess each of these characteristics.

- Good listener
- Professional
- Objective
- Tactful
- Conscientious
- Reliable
- Political savvy
- Sense of humor
- Visible and involved in professional organizations and activities
- Able to work on a variety of unrelated tasks
- Team player
- Excellent written and verbal skills
- Excellent computer skills
- Organized
- Teacher/educator
- Ability to build and manage relationships
- Ability to implement change
- Self-motivated
- Self-disciplined
- Positive attitude

The hallmarks of a successful subcontracting relationship include that the owner and the subcontractor feel justly rewarded. The owner maintains the relationship with the client. The subcontractor works for a fixed fee for a finite period and agrees with the philosophies, materials, and language of the company. Figure 5.2 gives a detailed list of the desirable skills of a subcontractor.

Advantages and Disadvantages of Working with Subcontractors

Subcontracting has certain benefits and the LNC business owner should consider the following advantages. The owner:

- Gets special expertise
- Uses the subcontractor as needed

Business and management skills	
Compromise	Set goals
Make decisions	Train others
Plan strategy	Troubleshoot
Oral communication skills	
Be humorous	Interpret
Debate	Interview others for information
Explain things to others	
Written communication skills	
Edit	Translate
Proofread	Write clearly and succinctly
Organizational skills	
Coordinate projects and schedules or deadlines	Process documents
Handle details	Set up and maintain record-keeping systems
Implement plans	
Interpersonal skills	
Advise	Influence people
Advocate	Listen attentively
Coach	Network
Counsel	Persuade
Empathize	Provide constructive criticism
Facilitate others' development	Assist clients
Guide	
Cognitive skills	
Analyze facts, situations, and issues	Observe
Assess needs	Research
Conceptualize	Synthesize or integrate information and ideas
Develop theories or hypotheses	
Be logical	
Creative skills	
Design and develop work product conducive to the situation	Use imagination
	Visualize

Figure 5.2 Desirable Skills in a Subcontractor

- Saves on tax contributions
- Saves on benefits
- Has flexibility in the relationship

Now, consider the downside and the disadvantages of hiring a subcontractor. The owner:

- Runs the risk of tax problems if he or she is not scrupulous in his business practices
- May not have the same continuity in the relationship that the owner has with an employee
- May have to pay higher fees to a subcontractor than to a full-time employee
- Has limited control over the subcontractor
- May train the subcontractor, who then becomes a competitor in the area

Table 5.1 illustrates the pros and cons of using a subcontractor.

Locating Subcontractors

Subcontractors should have experience relevant to the LNC's business needs or environment. The subcontractor should be able to function as an effective teacher, thus providing the LNC owner with the specifics of the job or assignment. The subcontractor should have a level of mastery in the area of expertise. Finding a subcontractor with these and other abilities allowing that individual to dovetail into the business can be a challenging project. Resources are readily available to help in this often daunting experience.

- Look for a subcontractor locally. Look within the local hospital, health care facilities, or schools of nursing.

Table 5.1 Pros and Cons of Using a Subcontractor

Advantages	Disadvantages
The company hires a subcontractor when needed.	Subcontractors may cost the business more than the employee-equivalent day rate.
Use a subcontractor for one-of-a-kind projects requiring specialist expertise or fast turnaround.	The owner does not acquire or develop skills or expertise of the specialist.
The owner's permanent staff can concentrate on the core business.	Permanent staff may resent that the contractors may be paid more or that they have more flexibility in their work hours.
Subcontractors can start the work or project at short notice, even when large numbers of workers are required.	The owner does not have direct control over the quality of the subcontractor's work.
The owner can often specify the type and duration of contract needed for the job.	Subcontractors may not meet the business philosophy. They may lack motivation and commitment when compared to that of the owner or the permanent staff.
The subcontractor is not on the permanent payroll.	The owner needs to understand the relevant tax implications that apply to the employment of subcontractors.

- Check with the local chapter of the American Association of Legal Nurse Consultants (AALNC).
- Check the membership directory of the AALNC.
- Advertise in the *Nursing Spectrum.*
- Check the national or local chapters of various specialty nursing organizations, such as the local chapter of the American Association of Critical Care Nurses, for a nurse to help with a case involving critical care issues.
- Attend the annual conference of the AALNC and participate in special-interest activity groups and actively network at the conference. Keep in mind that interviewing a number of potential subcontractors at the conference is a very cost-effective approach.
- Post on an LNC listserv.
- Do not forget that the most reliable source comes from personal recommendations from a friend or a colleague.

Interviewing

Preparing to interview a potential subcontractor is an important task. After identifying the skills necessary to fill this role properly, the owner will review the subcontractor's CV and research this potential subcontractor as much as possible. In addition to these steps, the LNC should mentally prepare because interviewing is very much about psychology. In essence, an interview is a social interaction as well as a business meeting. In order to interview strategically, the owner must focus on the dynamics of the process.

In general, the interview process should adhere to the business' standard practice. Once the owner makes an offer to the subcontractor and the person has agreed to the general conditions and requirements, a letter of agreement, professional services contract, or independent contract agreement should be drafted. Consider hiring an attorney to draft this agreement and/or contract, obtaining a copy of an agreement in a book located in a local bookstore, or searching the Internet and downloading a boilerplate type of agreement.

An interview of a potential subcontractor can be stressful; however, techniques to decrease this preinterview stress can be used. Channel nervous energy into positive actions. Try to schedule interviews so that current tasks can be completed and daily business routine maintained. Thoroughly prepare but do not focus too much excessive time and energy on this task. Take a break and allow some downtime. Do not rush to the interview. Plan the interview for a time of day when pressures from the normal daily business routine are reduced. Do not go from one meeting immediately into the interview. Allow time before as well as after the interview. This way, if the meeting prior to the interview takes longer than originally planned, there is

no rush to be on time. Use time-honored stress-reduction techniques such as controlled breathing, muscle relaxation, and visualization as preparation.

Physical relaxation leads to mental relaxation and increased powers of observation. As taught in psychology classes, effective communication is a combination of oral and nonverbal communication. The LNC owner will interpret the verbal message from the potential subcontractor and will hear the tone, speed, volume, inflection, and vocal quality of this person's speech as well as the interviewee's facial expression and body language. The image that the owner projects during the interview process is extremely important to a potential subcontractor. This image helps the subcontractor decide whether to accept assignments from the owner. Important nonverbal communication includes the initial handshake, posture, hand gestures, facial expressions, head movements, and miscellaneous gestures such as drumming fingers on the desk or playing with jewelry.

Early in the interviewing process, ask for a list of references or actual letters of recommendation from the potential subcontractor. Once the interview is completed, contact some of the sources contained within this reference listing to determine the subcontractor's competence.

Ask the potential subcontractor for a portfolio or samples of work product. Portfolios enhance the image of the subcontractor. Each person interested in becoming a subcontractor should put one together. This portfolio is a type of prospectus that puts a finishing touch on the overall image and makes the subcontractor appear more professional. The portfolio should contain a copy of the CV or resume; letters of recommendation; reference list or list of past clients; and samples of various work products. These documents assist the owner in the hiring decision. Samples of various work products allow the opportunity to compare the writing skills between two potential subcontractors. Obtaining a list of past clients and/or references allows the employer a chance to speak with the subcontractor's previous clients.

The fear that a subcontractor will soak up all that he or she can from a successful LNC prevents many from hiring subcontractors. This issue is a difficult one; many LNC owners have provided the training grounds for others to start businesses and become competitors. On the other hand, many subcontractors are not interested in self-employment. This subcontractor may not have the lifestyle that can accommodate running a business or the risks connected with self-employment. The subcontractor may be interested in doing this work part time while continuing to be clinically active.

During the interview, the owner will want to determine if the subcontractor has plans for the long run and is not just marking time before starting a consulting firm. The LNC owner should watch for subcontractors who display exploitative or unethical behaviors during the interview. If the

prospective subcontractor tells a story of taking case files from a previous employer and holding these files hostage until payment was made, the owner should quickly determine that this may not be an ethical person and should not be considered as a subcontractor.

Interview questions that may assist the owner in determining whether the subcontractor is using this as a stepping stone to starting a company may include:

- Do you do any marketing?
- What type of marketing do you do?
- Have you marketed your services as an LNC in the past?
- Do you have future plans to market?
- Are you interested in starting an LNC business?
- How long do you expect to stay active clinically?
- How many hours per week can you work as an LNC?

The objective of an interview is to get to know the prospective subcontractor well enough to make a good hiring decision. Experts suggest that the interview should begin with the prospective subcontractor talking a little about himself. The owner should find out what past responsibilities have been, but should focus on the subcontractor's accomplishments, skills, and abilities. Distractions during the interviewing process, such as taking phone calls or speaking to another employee, are often disruptive and can cause the owner to lose the flow of the interview. Interruptions should be kept to a minimum.

Interviewing Styles, Formats, and Settings

The most popular interview styles include direct, behavior based, and conversational. The directed interview tends to be structured and follows a logical progression with a question–answer format. The negative aspect of this type of interview is that it may become too structured. The positive aspect is that it is easy to prepare for this interview because the line of questioning is very straightforward and logical.

The behavior-based interview is based on a line of questioning that elicits information about the interviewee's actual behavior in a variety of hypothetical or real-life circumstances. The focus of this interview is on the abilities and accomplishments of the interviewee. The negative side to this type of interview is that it requires quite a bit of preparation. The positive aspect is that the interviewer is able to determine the interviewee's personal qualities as well as knowledge and skills.

The conversational interview does not follow the typical question and answer format but tends to flow from one topic to the next as in a typical

conversation. During the conversational interview, open-ended questions are used instead of specific questions. This interview may appear to have no apparent agenda. The negative side to this type of interview is that the interviewer needs to remain focused on where this conversation is going. A positive note is that it is often more relaxed and less formal. This makes the interviewee more comfortable and encourages discussion of thoughts and opinions in more depth.

Interview Questions

A good resume or relevant experience does not necessarily mean that a subcontractor will be a good match for the business. To prevent hiring poor "fits," thoroughly screen potential subcontractors during the interviewing process. A good question to ask is, "Tell me something about yourself that is not on your curriculum vitae of which you are really proud." Pride is an extremely personal emotion; assuming that the subcontractor has talent, this answer alone indicates whether he or she will be able to represent the company well.

Question Types. Experienced interviewers frequently utilize open-ended questions during the interview process. These types of questions provide few clues to the interviewer's motives. They leave a lot of room for maneuverability and can provide a lot of information about the prospective subcontractor.

- "Tell me about yourself." For some, this is a difficult question to answer because no parameters guide the proper response. This question is a calculated way of finding out how the subcontractor organizes and articulates thoughts and on which information the subcontractor has chosen to focus.
- "Tell me a story." This leaves it up to the subcontractor to decide whether to discuss himself or a particular incident from professional life, or whether to tell an amusing anecdote. When asking this question, look for demonstrations of the subcontractor's skills, personality, or values. This question is a good way to find out about the subcontractor's ability to be creative or entertaining.

Use questions that:

- Judge the potential subcontractor's ability to think fast and use good judgment, such as, "if I were to ask your current nursing manager to evaluate you, what would this manager say?" This question allows the LNC to see whether the potential subcontractor is able to assess personal weaknesses and strengths sincerely.
- Gauge leadership potential and the ability to work in a team manner, such as, "How do you motivate a coworker who is suffering from job

burnout?" This question allows insight into managerial assets of motivating and inspiring others.

- Are very specific and look for flaws, such as, "Tell me about a conflict you had with a coworker or a boss." This question will allow the interviewer to get at the general issue of fit. Does this potential subcontractor have difficulty getting along with others? Is the subcontractor tactful? The use of this question serves as an indirect way of asking what the subcontractor is looking for in the business owner.
- Will reveal character and uniqueness, such as, "Why should I hire you?" The goal in asking this very broad question is to find out if the potential subcontractor is able to identify strengths and to explore how this person will interface to help meet the business' needs.

Use General Questions.

- How long have you been a nurse?
- How long have you worked as a subcontractor?
- How many projects such as this have you completed? Do you have experience with this type of project?
- Why do you want to do subcontracting work?
- Is your nursing license in good standing?
- Do you carry professional malpractice insurance?
- What other kinds of insurance do you carry?
- Are these policies up to date? (Ask for verification.)
- May I have the names of the last five clients for whom you subcontracted?
- What are your work hours?
- How do you deal with delays in your work schedule?
- Where do you actually do the work?
- Can you estimate how much this specific project will cost?
- Do you have office equipment? If so, what do you have? Do you have a computer? How would you characterize your skill level? Which type of software do you use? Do you have fax and printing capabilities? What type of back-up systems do you use? What is the routine for your back-up?

Mistakes and Pitfalls to Avoid during the Interview

Owner. The owner should avoid the following:

- Not being prepared for the interview; not knowing the needs of the company
- Not knowing anything about the individual who has applied for the subcontracting position; not reviewing the resume in advance

- Showing a flat, stiff demeanor; not smiling; not showing any enthusiasm or energy during the interview process; being too formal
- Offering the job to the first person interviewed, even when that person is not an exact fit
- Not checking qualifications, current state licensure, and references

Subcontractor. Subcontractors should avoid the following:

- Not being on time (be punctual for the interview)
- Not having any knowledge of the consulting firm or company (know as much as possible about the company)
- Not dressing professionally (dress and act professionally for the interview)
- Not listening during the interview (show enthusiasm for the role and listen as well as talk)
- Making disparaging comments about attorneys

Listen for Clichés

Many people do not know that they are using clichés. These statements tend to come across as negative. A potential subcontractor who states, "I'm a quick learner," draws attention to the fact that the interviewee does not know how to do something. If the potential subcontractor states, "If you just give me a chance…," this portrays desperation for the job and implies that past performance has not always been stellar. When someone states, "I'm going to be honest with you…," one wonders how honest this person is. If the potential subcontractor talks knowingly about the hundreds of frivolous medical malpractice cases that are filed, a lack of knowledge of the realities of litigation is revealed.

Proficiency Testing

Subcontractors need to possess excellent written and verbal communication skills. The subcontractor should demonstrate the ability to use proper grammar, punctuation, and spelling in written reports. The subcontractor should have the ability to set up and draft a formal business letter. Before performing the verbal aspect of the interview, the LNC owner should ascertain the communication level of a prospective subcontractor by administering some basic grammar, punctuation, and spelling tests. If the applicant cannot get through the tests, the owner does not need to waste time with the interview. Figure 5.3 through Figure 5.6, Table 5.2, and Table 5.3 provide sample tests and answer keys.

To summarize, the following steps are key to the interview process:

- Welcome the applicant. Greet the potential subcontractor cordially and chat informally for a few minutes. This helps the potential subcontractor relax.

Directions: Please correct the typos and other errors.
To: GW
From: LL
At the time of her final admission to Redwood City medical center Mrs. Mary Hockel was a 69-year-old woman who weighed 81 pounds (per the preoperative checklist). (Her weight is also listed as 90 pounds on the nursing admission assessment. Her blood pressure was recorded as 132/76 on the preoperative checklist. She was admitted to the hospital for a total knee replacement. She was taken to the operating room on 9/16/04. She was estimated to have a blood loss of 200 cc in the operating room. The surgeon Dr.Pullis, placed two hemovac drains in Mrs. Hockel's knee at the completion of the operation. One was connected to a cell saver unit to permit autotransfusion. In the recovery room, she lost 350 ccs, but received 125 ccs of her own blood, for a net loss of 225 ccs. Her blood pressure ran about 120/80 while in the recovery room. The physician
wrote postoperative orders, which included:
Routine postop vital signs
Morphine 6 mg IM every 4–? h (second number unreadable) and Vistaril 25 mg IM every 3-5 h prn
CBC, SMA 6 at 6 PM, call with results
Accurate I and O (intake and output): reconstitute hemovac drain q2h and prn
Straight cath q 6–8 h prn bladder distension/retention
Mrs. Hockel was transferred to the nursing unit at 2:15 PM according to the notes of the recovery room nurse. There is one recorded set of vital signs on the graphic record for this shift. The patient's vital sign's were blood pressure of 101/84 and a pulse of 72 at 3:00 PM. The patient received morphine 6 mg and Vistaril 25 mg at 3:15 PM, according to the notes of Nurse Loomis. A hemovac output of 500 ccs is recorded on the graphic chart under the column marked "Day" (shift). There are no incremental amounts recorded on the graphic sheet or the intake and output sheet for this shift. The nurses notes by Nurse Loomis state that the patient had frequent voidings for small amounts of urine. Two voidings are recorded (150 cc and 25 cc). 800 ccs of urine was obtained when Sara Hockel RN straight catheterized her mother in law at 8:00 PM.
A sample of blood was drawn at 6:00 PM for testing the hemoglobin and hematocrit. The results were hemoglobin: 11.0 (down from 13.7 on 9/12/94) and hematocrit 32.1 (down from 39.3 on 9/12/94).
At about 8:00 PM, the care of Mrs. Hockel fell to Maura Reilly. There are two recorded vital signs before midnight. Mrs. Hockel's blood pressure was 102/84 with a pulse of 114 at 8:00 PM. Her hemovac output was recorded on the fluid intake and output form as 100 ccs at 9:00 PM. At 9:25 PM, the patient was given morphine and Vistaril. At 11:30 PM Mrs. Hockel's blood pressure was 98/62 with a pulse of 104. Dr. Feinstein made rounds at 11:30 PM and entered a progress note labeled as Post Op Day #1. He removed the hemovac.
According to the nursing progress notes, Melanie Reilly gave the patient an injection of morphine at 3:15 AM. The next recording of blood pressure was timed for 4:00 AM and was recorded as 89/56 with a pulse of 93. Maura Reilly's notes stated that these vital signs were 'stable'. Her notes claim that she went into the patient's room at 5:00 AM and the patient was asleep with adequate color. The patient was found unresponsive (no pulse or respirations) at 5:50 AM. A cardiac arrest effort was initiated. The patient was transferred to ICU. No nursing notes for the 8 PM to 8 AM shift were found at that time. The page in the medical record was written after the fact by Maura Reilly. The note did not include documentation that the hemovac drain was removed; the time of the addendum was not noted on the record. The patient expried 3 days later.

Figure 5.3 Proofreading Test

To: GW
From: LL

At the time of her final admission to Redwood City **Medical Center,** Mrs. Mary Hockel was a 69-year-old woman who weighed 81 pounds (per the preoperative checklist). (Her weight is also listed as 90 pounds on the nursing admission assessment). Her blood pressure was recorded as 132/76 on the preoperative checklist. She was admitted to the hospital for a total knee replacement. She was taken to the operating room on 9/16/04. It was estimated that she had a blood loss of 200 cc in the operating room. The surgeon**, Dr. Pullis**, placed two hemovac drains in Mrs. Hockel's knee at the completion of the operation. One was connected to a cell saver unit to permit autotransfusion. In the recovery room, she lost 350 ccs, but received 125 ccs of her own blood, for a net loss of 225 ccs. Her blood pressure ran about 120/80 while in the recovery room. The physician wrote postoperative orders, which included:

Routine postop vital signs

Morphine 6 mg IM every 4–? h (second number unreadable) and Vistaril 25 mg IM every 3-5 h prn

CBC, SMA 6 at 6 PM, call with results

Accurate I and O (intake and output): reconstitute hemovac drain q2h and prn

Straight cath q 6–8 h prn bladder distension/retention

Mrs. Hockel was transferred to the nursing unit at 2:15 PM according to the notes of the recovery room nurse. There is one recorded set of vital signs on the graphic record for this shift. The patient's vital **signs** were blood pressure of 101/84 and a pulse of 72 at 3:00 PM. The patient received morphine 6 mg and Vistaril 25 mg at 3:15 PM, according to the notes of Nurse Loomis. A hemovac output of 500 ccs is recorded on the graphic chart under the column marked "Day" (shift). There are no incremental amounts recorded on the graphic sheet or the intake and output sheet for this shift. The nurses**'** notes by Nurse Loomis state that the patient had frequent voidings **of** small amounts of urine. Two voidings are recorded (150 cc and 25 cc). **Eight hundred** ccs of urine was obtained when Sara Hockel**,** RN**,** straight catheterized her **mother-in-law** at 8:00 PM. (**Do not start a sentence with a number. It should be spelled out.)**

A sample of blood was drawn at 6:00 PM for testing the hemoglobin and hematocrit. The results were hemoglobin: 11.0 (down from 13.7 on 9/12/94) and hematocrit 32.1 (down from 39.3 on 9/12/94).

At about 8:00 PM, the care of Mrs. Hockel fell to Maura Reilly. There are two recorded vital signs before midnight. Mrs. Hockel's blood pressure was 102/84 with a pulse of 114 at 8:00 PM. Her hemovac output was recorded on the fluid intake and output form as 100 ccs at 9:00 PM. At 9:25 PM, the patient was given morphine and Vistaril. At 11:30 PM**,** Mrs. Hockel's blood pressure was 98/62 with a pulse of 104. Dr. Feinstein made rounds at around midnight and entered a progress note labeled as Post Op Day #1. He removed the hemovac.

According to the nursing progress notes, **Maura** Reilly gave the patient an injection of morphine at 3:15 AM. The next recording of blood pressure was timed for 4:00 AM and was recorded as 89/56 with a pulse of 93. Maura Reilly's notes stated that these vital signs were **"stable."** Her notes claim that she went into the patient's room at 5:00 AM and the patient was asleep with adequate color. The patient was found unresponsive (no pulse or respirations) at 5:50 AM. A cardiac arrest effort was initiated. The patient was transferred to ICU. No nursing notes for the 8 PM to 8 AM shift were found at that time. The page in the medical record was written after the fact by Maura Reilly. The note did not include documentation that the hemovac drain was removed; the time of the addendum was not noted on the record. The patient **expired** 3 days later.

[a]Corrections are in bold.

Figure 5.4 Proofreading Test Key[a]

1. The doctor hurt (a) myself (b) me during the physical examination.
2. Several (a) MD's (b) MDs agreed that one bacterial strain caused many of the symptoms.
3. (a) You're (b) Your right to privacy will not be abused.
4. I (a) seen (b) saw that in the client's deposition.
5. The patient (a) drunk (b) drank her potassium supplement over a 2-hour period.
6. She earned her masters degree in (a) fewer (b) less than 4 years.
7. Callina Cortina Ph.D. will be our expert witness.
8. When applying as an LNC subcontractor, you need to have a valid state nursing license, reference letter, resume or curriculum vitae and samples of work product.
9. After researching the issue I conclude that the surgeon deviated from the standard of care.
10. We ask therefore, that you keep this matter confidential.
11. The judge had heard these arguments before; therefore, he turned his attention to another matter.
12. The Frank & Miles law firm offers assistance in (a) product-liability (b) product liability lawsuits.
13. One of the (a) lawyer's (b) lawyers left her briefcase behind.
14. (a) Who (b) Whom should we call?
15. (a) The testifying expert stated, "I am very familiar with the standard of care". (b) The testifying expert stated, "I am very familiar with the standard of care."

Figure 5.5 Grammar and Punctuation Test

- Summarize the reasons why the company is seeking a subcontractor. Briefly describe the types of jobs or projects and the desired skills of the subcontractor.
- Ask questions and then listen. Formulate questions to be relevant to the role and make sure that they cover the potential subcontractor's work experience and education, and other relevant topics. Listen carefully and let the interviewee do the majority of the talking.
- Explore experience and find out the potential subcontractor's strengths and weaknesses. Because the best predictor of future behavior is past behavior, explore the potential subcontractor's past experience. Asking about strengths and weaknesses may appear to be slightly old-fashioned but the answers can be very revealing.
- Conclude the interview. At the close of questioning, allow an opportunity for the potential subcontractor to offer any further information that may be necessary to make an informed hiring decision. Encourage the interviewee to ask questions. Thank the potential subcontractor for the interest in the company and say when notification of the final decision will be made.

1. The doctor hurt (a) myself (b) me during the physical examination.
The self pronoun should never be used as a subject. "Me" is the subject, so (b) is correct.
2. Several (a) MD's (b) MDs agreed that one bacterial strain caused many of the symptoms.
(b) is correct: multiple physicians are agreeing. Possessive is indicated by "'s." Plural is indicated by "s."
3. (a) You're (b) Your right to privacy will not be abused.
(b) is correct. The apostrophe is used to form a contraction. Using (a) would mean "you are."
4. I (a) seen (b (saw) that in the client's deposition.
Past tense is often confused with a past participle; (b) is correct.
5. The patient (a) drunk (b) drank her potassium supplement over a 2-hour period.
The past tense of drink is drank. Drunk is the past participle of drink, so (b) is correct.
6. She earned her masters degree in (a) fewer (b) less than four years.
Adjectives describe; in this case (b) is correct because the amount of time is being measured.
7. Callina Cortina, Ph.D., will be our expert witness.
A comma is placed before and after Ph.D.
8. When applying as an LNC subcontractor, you need to have a valid state nursing license, reference letter, resume or curriculum vitae, and samples of work product.
A comma is used when there is a series of three or more elements and when a conjunction joins the last element in the series. The correct uses of the commas then are after license, after letter, and after vitae.
9. After researching the issue, I conclude that the surgeon deviated from the standard of care.
A comma is used after an introductory clause. The comma is placed after the word *issue*.
10. We ask, therefore, that you keep this matter confidential.
The semicolon is changed to a comma because there are no independent clauses.
11. The judge had heard these arguments before; therefore, he turned his attention to another matter.
The comma after the word *before* should be changed to a semicolon and a comma should be placed after *therefore* because it is a conjunctive adverb.
12. The Frank & Miles law firm offers assistance in (a) product-liability (b) product liability lawsuits.
The hyphens in this case are used between parts of a compound adjective when it modifies the next word; (a) is correct. This example is frequently written incorrectly.
13. One of the (a) lawyer's (b) lawyers left her briefcase behind.
The number of lawyers is plural; (b) is correct.
14. (a) Who (b) Whom should we call?
(b) is correct. An easy way to remember this is that "who" takes the place of he or she, and whom stands for him or her. Thus, this sentence would read "should we call him or her?"
15. (a)The testifying expert stated, "I am very familiar with the standard of care". (b) The testifying expert stated, "I am very familiar with the standard of care."
(b) is correct. Place colons and semicolons outside quotations marks. Use quotation marks for quotes of 49 words or less. When the quote contains 50 words or more, block indent for the quote along with single-space type. In the U.S., it is the rule always to place commas and periods *inside* quotation marks. However, the rest of the English-speaking world does not follow this American practice.
Corrections and explanations are in bold.

Figure 5.6 Grammar and Punctuation Test Key[a]

Table 5.2 Spelling Test

Some of the following words are incorrectly spelled. If the spelling is incorrect, write the correct spelling in the space after the word.

Accommodate	Maintenance
Administator	Mangement
A lot	Medial Malpractice
Appenddix	Murmur
Attendance	Nusing
Bussiness	Occurred
Calendar	Oxgen
Clincial	Paient
Correspondence	Pennyslvania
Definately	Philadephia
Desperate	Postoperaive
Developement	Priviledge
Disabilites	Pscyhology
Eligible	Questionnaire
Embarassment	Receipt
Equiptment	Recieve
Existence	Rhythm
Foreign	Seizere
Forty	Sceinces
Gauge	Strenuous
Hemorrhage	Succes
Hosptial	Tendency
Insitute	Theraputic
Irregardless	Trail attorneys
Leisure	Untied States

After the Interview

The owner who is favorably impressed with a potential subcontractor will want to speak with others to determine the subcontractor's competence. Contact these references as soon as possible after the interview. Check the authenticity of telephone references and take notes during the call. Check the references assiduously for first-time subcontractors. Check the validity of state licensure. Check qualifications, skills, and membership in professional organizations. If the subcontractor has supplied information pertaining to professional insurance, check to make sure that this policy is up to date and in effect. The owner may wish to do an Internet search or "Google" the person's name to see what information is obtained.

Performing a background check on a potential employee is common and considered sound business practice. Nurses who apply for a position at a hospital or other health care facility should expect the Human Resources Department to run a background check. Background checks of subcontractors can be valuable. The marketing information and advertisements from companies in the

Table 5.3 Spelling Test Key

Word	Correct spelling	Word	Correct spelling
Accommodate		Maintenance	
Administator	Administrator	Mangement	Management
A lot		Medial malpractice	Medical malpractice
Appenddix	Appendix	Murmur	
Attendance		Nusing	Nursing
Bussiness	Business	Occurred	
Calendar		Oxgen	Oxygen
Clincial	Clinical	Paient	Patient
Correspondence		Pennyslvania	Pennsylvania
Definately	Definitely	Philadephia	Philadelphia
Desperate		Postoperaive	Postoperative
Development	Development	Priviledge	Privilege
Disabilites	Disabilities	Pscyhology	Psychology
Eligible		Questionnaire	
Embarassment	Embarrassment	Receipt	
Equiptment	Equipment	Recieve	Receive
Existence		Rhythm	
Foreign		Sciences	Sciences
Forty		Seizere	Seizure
Gauge		Strenuous	
Hemorrhage		Succes	Success
Hosptial	Hospital	Tendency	
Insitute	Institute	Theraputic	Therapeutic
Irregardless	Regardless	Trail attorneys	Trial attorneys
Leisure		Untied States	United States

business of performing background checks for companies state that it is important for small business owners to know the background of the people whom they will be hiring. A background check will save many headaches in the end because even a comparatively small loss or legal claim brought about by a bad relationship could potentially devastate a small business.

Some firms specializing in performing background checks may charge up to $150 to $200, depending upon the type of search. Searches can include credit checks; civil and criminal checks; public record searches for liens, judgments, or bankruptcy; and so on. Locate companies who perform background checks through the local Better Business Bureau or the yellow pages of the telephone directory, or by searching the Internet or networking with other business owners.

An owner who does not use the services of a background checking company should consider:

- Calling current and former supervisors or other contractors
- Checking academic references

- Checking the network of professional associates
- Doing some Web surfing

Establishing Rates

Hiring a subcontractor and establishing the rate of pay usually involve some degree of compromise. A small business owner may be able to negotiate a smaller hourly rate if the subcontractor has no experience. An experienced subcontractor with the specific expertise needed for a special project may be able to command a higher rate. In order to feel comfortable with the compromises, the owner should make a careful assessment of priorities and get a complete picture of exactly what the project will entail and what the subcontractor has to offer. The owner should:

- Identify priorities and specific deadlines.
- Scrutinize what the subcontractor is requesting.
- Determine what can be offered.

Negotiating the Best Deal: Principles of Savvy Negotiations

In his highly publicized book, *The 7 Habits of Highly Effective People*, Stephen Covey (2001) states that "the essence of principled negotiation is to separate the person from the problem, to focus on interests and not on positions, to invent options for mutual gain, and to insist on objective criteria — some external standard or principle that both parties can buy into."

In most situations, the owner should not be the person to offer a fee or per diem rate to the subcontractor. First, the owner should wait to determine that this subcontractor is appropriate. Second, the owner should encourage the subcontractor to cite a fee. Frequently, such fees are reasonable because the subcontractor has not pursued a comprehensive fee strategy. If this is the case, the owner who offers the fee first may begin at too high a level. On the other hand, the owner may find that this subcontractor is under the misguided belief that the rate should be the same as that for a testifying expert. In this case, the owner may be in the position to negotiate a lower fee.

The owner should never pay a subcontractor a percentage of the income earned from work. The subcontractor should be paid only for services performed. A widely used general rule of thumb for a subcontractor's hourly rate is one third of the rate quoted to the client.

The following guidelines can be used when an LNC is negotiating with an attorney or insurance client for a new project. They can also be helpful when hiring and negotiating with a subcontractor.

- Do the homework; know what the project entails.

- Negotiate with a style that reflects the company.
- Be aggressive when necessary but never be rude or overbearing. Tact goes a long way in negotiations.
- Be fair; it is not about winning at the expense of others. Come to terms that are satisfactory to both sides.
- Be truthful. Do not lie to win points or be misleading.
- Be flexible. Negotiations mean that the owner needs to give in order to get.
- Be resourceful in thinking of what can be obtained out of the negotiation.
- Do not hesitate; be persuasive and confident.

Matching Subcontractor Rates to Priorities

When the company has obtained a project that requires the subcontractor's help, estimate the amount of assistance needed and build those fees into the project fee. Subcontractors are paid based on their contribution and the work performed, not based on the size of the project. Different fees are paid to different subcontractors based upon their specialized expertise or simply if they are better at what they do. Each is a separate negotiation. The owner is free to pay based on value. It is not always the best idea to hire based upon the lowest fee. Instead, hire based upon the degree to which the company will be assisted by utilizing the subcontractor's skills.

When negotiating with an inexperienced subcontractor, the owner should discuss an hourly rate that is initially based upon the fact that this subcontractor has never done this type of work. In addition, a learning curve needs to be considered. This is built into the estimated time needed to complete a specific project. This negotiation can include the issue that the hourly rate may increase along with experience and as the LNC owner raises rates for clients.

The concept of the learning curve is important for novice subcontractors to understand. The theory of learning is simple: the repetition of a task results in less time or effort expended on that task. The more that someone does something, the more proficient the person will become. Every time an LNC reviews a case for merit, performance of this task improves as the LNC uses newly acquired knowledge and skills. With more experience, the LNC is able to develop a better work product. The period of time needed to acquire knowledge and skills can be modest for some or may take longer for others. The inexperienced LNC subcontractor should remember that, initially, the time spent on a project would exceed the time that an experienced LNC spends on the same project.

The subcontractor should realize that not every minute spent on a case should be charged to the owner. LNC owners frequently tell a story about the

Billing Sheet
Consultant/Expert Witness

Law firm:_____
Name of attorney:_____Attorney file #:_____
Patient's name:_____Your name: _____
Name of case if different from patient's name:_____

Date	Start/stop	Total hours	Your rate	Description/activity

Expenses:_____

Source: Courtesy of Patricia Iyer, Med League Support Services, Inc.

Figure 5.7 Billing Sheet

subcontractor who spent 20 hours on a case that should have taken no more than 10 hours. This subcontractor then became irate when the owner attempted to discuss this situation. A solution to this potential problem is that the owner and the subcontractor should explicitly discuss the hourly rate and the number of hours expected to complete a project. Subcontractors should be expected to keep detailed billing records (Figure 5.7 and Figure 5.8).

Secrets for Wise Decision Making

The decision-making process involves combining objective and subjective information, making an assessment, and then deriving a goal or plan. Good decision makers are methodical; they do not just "wing it," but rather follow a step-by-step process that leads to the final decision.

Billing Policies

Please itemize your bills carefully so that LNC, Inc. can provide the itemization to the client, if necessary. This is particularly important when it takes a large number of hours to read through material provided to you. An itemized bill should provide sufficient detail to justify the total amount of time being billed. We bill in 15-minute increments with a minimum of 15 minutes per activity. It is wise to keep track of hours and include them on the bill with the date, number of hours spent, and the activity, such as reading materials or report preparation. (Please refer to our description list below.) It is recommended that you not allow bills to accrue to large proportions, or cover a period longer than 1 month without sending us an invoice.

When you are asked to appear for a deposition or in court, please notify LNC, Inc. immediately. *If you are asked to quote a rate to an opposing counsel, as in the case of a deposition, please quote the rate LNC, Inc. charges for your services. We will bill for your services at the deposition. Please call us the day after deposition.* Whenever you quote fees with a LNC, Inc. client or others with whom you may be discussing the work you do for LNC, Inc. referrals, please quote the rate at which LNC, Inc. bills a client for you, not the rate that you receive. This helps to protect the trade secret aspect of LNC, Inc.'s business.

In accordance with LNC, Inc.'s agreement with you, should any of the attorneys at this law firm call you directly to review another case or want you to do further work, please let us know immediately. We will again bill for your services.

Please use the terms in the chart below in preparing your invoice.

We have added three examples of how your invoice would look.

Date	Start/stop	Total hours	Your rate	Description
1/03/99	11:30–1:45	2.25	$___/hr	Prepare affidavit of merit
1/05/99	9:00–12:30	3.5	$___/hr	Preparation for deposition
1/06/99	1:00–5:45	4.75	$___/hr	Deposition
				Office consultation (meeting with attorney)
				Organize and review medical records. Prepare report
				Organization of medical records
				Preparation of report
				Review deposition of ____ (another deposition that you have reviewed)
				Review of additional medical records
				Review of medical records
				Review deposition of (your name)
				Telephone consultation
				Travel time
				Preparation for trial
				Testimony of (your name)

Figure 5.8 Billing Sheet

Steps to Making a Good Decision

- Keep the process simple; do not make it harder than it already is.
- Evaluate the quality of the available information.
- If gaps in knowledge are present, do more research.
- Ask others for their opinions and utilize advisors within the local chapter of AALNC or the leaders within the national AALNC. Ask friends and utilize networking to put a perspective and input on thoughts and decisions.
- Do systematic evaluations.
- Adjust priorities as required; do not push the process but be flexible.
- Do not lose perspective.

To Contract or not to Contract

Typically, a contract or letter of agreement, also called an engagement letter, is signed by the consultant or business owner and the subcontractor to protect both parties by formally acknowledging the relationship; clearly stating the deliverables of a project or scope of services; and detailing the fees and expenses to be charged.

Contracts may be developed case by case or project by project or they may cover other specific periods, such as a quarter or a year. Yearly contracts afford the opportunity to adjust fees as necessary. Contracts may also be "evergreen" or in effect until changed. This model avoids the need to reissue contracts on a yearly basis and saves the owner much work and time. A letter of agreement, rather than a contract, is typically used when working with individual projects.

Subcontractor Agreements

Many LNCs have a company policy stating that there must be a written agreement with the subcontractor. This agreement outlines:

- The subcontractor's responsibilities and the objectives, scope of work, and key goals of the specified project.
- The resources if the subcontractor needs to have access to equipment and/or staff or the client.
- The fees and payment schedule, possibly including a penalty or incentive clause for underperformance or overperformance, respectively.
- The procedure for resolving disputes such as inappropriate or subpar work product or termination of services.
- Confidentiality agreements.

A good subcontractor agreement covers:

Services to be performed. This part of the contract should carefully spell out the services to be performed.

Timing. The contract should spell out when the services are to be performed. Also consider a late-penalty fee if the services are not performed on time or a bonus if the job is finished early. This bonus might be considered by the owner when the subcontractor finishes a project in an extremely short period of time. The owner should keep in mind that this bonus will come out of the profit. This may represent only a small loss if gains are made by the exceptional work product.

Payment. The payment clause of the contract should address the amount to be paid; the manner in which payment is to be paid (on an hourly basis or a project basis); and when payments are due. The owner should be reasonably satisfied with the quality and scope of services rendered by the subcontractor before being obligated to pay the entire amount. Some LNC owners believe that, to achieve maximum cash flow, the owner should not pay the subcontractor before the attorney pays the owner. Other LNCs pay their subcontractors within 30 days after delivery of the completed work product or project. The philosophy behind this business decision is that paying the subcontractor's invoice in a timely manner adds to the company's credibility.

Reporting. The contract can also address how often the contractor needs to report progress and to whom to report. Excessive control over the activities of the contractor may result in the subcontractor being deemed an employee for tax purposes.

Confidentiality obligations. The contract needs to make clear that the subcontractor must keep proprietary information about the company confidential and not use such information other than for the benefit of the company. The issues of the cases should not be disclosed to other parties.

Work for hire. The contract should typically provide that the work product developed by the subcontractor for the company will be deemed work for hire under the copyright laws and owned solely by the company and not by the subcontractor. Figure 5.9 is a sample of a subcontractor agreement.

Confidentiality Agreements

When hiring a subcontractor, owners should consider obtaining a signed confidentiality agreement. Subcontractors will have access to a considerable amount of confidential information. The agreement deals with the confidentiality issue, but can also state that the ideas and work product created in

Subcontractor Services Agreement

THIS AGREEMENT, effective the __ day of _____, 20__, by and between _____ of _____ (hereinafter "Company"), an individual, having a mailing address at _____ and _____ (hereinafter "Subcontractor"), an individual, having a mailing address at _____.

WHEREAS, Company desires to contract for certain Services of Subcontractor, as are hereinafter more particularly defined; and

WHEREAS, Subcontractor understands that Company does not practice medicine, nursing, or law, but is acting solely in the capacity of a purely consulting expert to attorneys in order to assist such attorneys in the preparation of medical and nursing malpractice cases and other cases involving medical, nursing, health care, or other related issues; and

WHEREAS, Subcontractor is licensed to practice nursing in the State of _____ and is competent and willing to provide the Services, as are hereinafter defined; and

WHEREAS, Subcontractor is willing to act as an independent contractor for Company in the review of such cases and provision of Services hereunder; and

WHEREAS, Company is willing, pursuant to the terms and conditions contained herein below, to hire Subcontractor to provide such Services, and Subcontractor is willing to provide such Services in return for certain consideration as hereinafter described.

NOW THEREFORE, in consideration of the mutual agreements, covenants and conditions herein contained, the parties hereto covenant and agree as follows:

1. INDEPENDENT CONTRACTOR: The parties hereto agree that the Services rendered by Subcontractor in the fulfillment of the terms and obligations of this Agreement shall be as an independent contractor. Subcontractor shall not be considered an employee of Company for any purpose and Subcontractor is not an agent, partner, or joint venturer of Company. Subcontractor shall not represent itself to third persons to be other than an independent contractor of Company, nor shall Subcontractor offer or agree to incur or assume any obligations or commitments in the name of Company or for Company.
2. TERM: This Agreement shall be effective from _____, 20__ through _____, 20__, and month to month thereafter unless and until termination by either party hereto by tendering a thirty (30) days' advance written notice to the other party.
3. SERVICES: Subcontractor warrants to Company that Subcontractor is willing and competent to provide the following services, including but not limited to consulting with Company, evaluating medical and nursing malpractice cases and other cases involving medical, nursing, health care, or other related issues and rendering written and verbal opinions or reports concerning such cases (all collectively referred to as "Services" hereunder).
4. LICENSE(S): Subcontractor warrants to Company that Subcontractor is of good professional standing and moral character and that Subcontractor currently holds, and throughout the term of the Agreement shall hold, a current and valid license to practice nursing in the state of _____. Subcontractor shall maintain, at its sole expense, the license(s) necessary to the performance and completion of the Services hereunder and Subcontractor shall pay in connection therewith all valid and applicable fees, assessments, or taxes levied by units of government with jurisdiction.
5. CONSULTATION: Subcontractor agrees to be available for consultation with Company, upon Company's reasonable advance notice with regard to such consultation, and agrees to meet all deadlines, as agreed upon between Subcontractor and Company, pursuant to Subcontractor's performance of the Services hereunder.

6. CONSIDERATION: Subcontractor shall invoice Company at an hourly rate of ____ dollars ($ _____) per hour for Subcontractor's Services hereunder. Such Subcontractor's invoice shall be in writing and mailed to Company and shall contain Subcontractor's Social Security Number and mailing address and shall reflect only reimbursable expenses, as provided below, and hours for Services actually expended and previously authorized by Company. Subcontractor shall be reimbursed by Company for all reasonable expenses, as approved in advance by Company, directly related to the Services provided by Subcontractor hereunder. Reimbursable expenses expressly exclude fees, assessments, or taxes payable by Subcontractor pursuant to paragraph 4 above and paragraph 7 below and any direct or indirect costs included in the hourly rate payable to Subcontractor. In the event that the Subcontractor incurs expenses in excess of the amounts approved by the Company, the Company may, but is under no obligation to, reimburse Subcontractor therefor. Subcontractor shall receive all undisputed payments due hereunder within thirty (30) days after receipt of Subcontractor's Invoice by Company. In the event of a dispute over any invoiced amount or portion thereof, the Company may withhold payment of the amount in dispute pending resolution of the dispute. The Subcontractor shall continue to perform Services notwithstanding such dispute.
7. NOTICES: Any notice, Subcontractor's invoice(s), statement, copy, or other communication provided for in this Agreement shall be in writing and shall be considered as duly delivered when personally delivered or when mailed by registered or certified mail, postage, prepaid, to the following:

To Subcontractor:

_____

_____

To Company:

_____

_____

8. TAXES: Subcontractor assumes full responsibility for and agrees to pay all contributions and taxes payable under federal and state social security acts, workers' compensation laws, unemployment compensation laws and income tax laws as to all of the compensation received by Subcontractor from Company hereunder.
9. RECORDS: All records of Subcontractor's direct labor and reimbursable expenses pertaining to the Services provided pursuant to the Agreement shall be kept on a generally acceptable accounting basis, shall be maintained for at least one (1) year, and shall be available for inspection by Company during normal business hours.
10. INDEMNIFICATION: Subcontractor hereby agrees to indemnify and save Company harmless from and against all claims, suits, demands, damages, losses, costs, and expenses, of whatsoever nature, brought by any person, firm, or corporation and alleged to have arisen out of or in connection with Subcontractor's Services hereunder.
11. CONFIDENTIALITY: Subcontractor agrees, except to the extent Subcontractor may be compelled by a court or government agency of competent jurisdiction or unless agreed in writing by the Company, not to disclose to any attorney, law firm, or any other entity, person, firm, or corporation (a) any information concerning the terms and content of this Agreement: including the hourly rate paid to the subcontractor, and the business or affairs of Company which Subcontractor may have acquired in the course of or incident to its performances of this Agreement or (b) any information relating to any of the Services being provided hereunder. In the event that the subcontractor receives a request for such information by a court or government agency, the Subcontractor shall immediately notify Company and Company shall have the opportunity to contest such request prior to the deadline for delivery. This provision shall survive expiration or termination of the Agreement.

12. SOLE PROPERTY: Any written report, opinion, evaluation, or other material supplied by Subcontractor to Company hereunder shall become the sole property of the Company and shall not, without the express written consent of Company, be used for any other purpose whatsoever.
13. ASSIGNMENT: Subcontractor shall not assign this Agreement nor any payment or part of any payment which may accrue hereunder nor subcontract the Services or any part thereof without first having obtained Company's written approval. If Company grants such approval, it shall not constitute a novation and Subcontractor shall nonetheless remain obligated to Company to ensure that the Services shall be completed in the time and manner herein agreed. In the instance of subcontracting, Subcontractor shall further cause each subcontractor to assume and satisfy all obligations of Subcontractor hereunder to the full extent same may be applicable to the portions of the Services subcontracted. Furthermore, Subcontractor shall be responsible for and liable for all errors, acts, or omissions of any assignee, subcontractor, or any of their agents, as if the same were performed or omitted by Subcontractor.
14. NONEXCLUSION: Subcontractor recognizes that this Agreement is not exclusive and that Company reserves the right to contract with other parties for similar services during the term of this Agreement.
15. TIME OF THE ESSENCE: The Subcontractor recognizes and agrees that time is of the essence in performance of Subcontractor's Services and that failure to provide Services on a timely basis shall constitute an event of default.
16. GOVERNING LAW: THE PROVISIONS OF THIS AGREEMENT AND ANY DOCUMENTS DELIVERED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____ (excluding any conflicts-of-law rule or principle that might refer same to the laws of another jurisdiction). All causes of action arising in connection with this Agreement shall be brought in those courts located in the County of _____, State of _____.
17. TAX IDENTIFICATION: Subcontractor hereby designates _____ as its Social Security Number or tax identification number for all purposes, which may require Company to report such to taxing authorities.

Company hereby designates _____ as its Social Security Number or tax identification number for all purposes, which may require Subcontractor to report such to taxing authorities.

18. ENTIRE AGREEMENT, AMENDMENTS AND WAIVERS: This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, between the parties. No supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.
19. MUTUALITY OF PREPARATION: This contract was prepared jointly by the parties hereto and not by either party to the exclusion of the other.
20. SEVERABILITY: It is the desire and intent of the parties that the terms, provisions, covenants, and remedies contained in this Agreement shall be enforceable to the fullest extent permitted by law. If any such term, provision, covenant, or remedy of this Agreement or the application thereof to any person or circumstances shall, to any extent, be construed to be invalid or unenforceable in whole or in part, then such term, provision, covenant or remedy shall be construed in a manner so as to permit its enforceability under the applicable law to the fullest extent permitted by law. In any case, the remaining provisions of the Agreement and the application thereof to any person or circumstances, other than those to which they have been held invalid or unenforceable, shall remain valid and in full force and effect.

21. TERMINATION FOR DEFAULT: Company may terminate this Agreement for cause at any time by furnishing Subcontractor with two (2) day advance written notice. In the event that Subcontractor is unable to cure the default within two (2) days, or any longer cure period agreed to in writing by the parties, the Agreement shall terminate and Subcontractor shall be paid for all work and services satisfactorily performed and all materials delivered through and until the effective date of termination. Additionally, Company reserves to itself all rights, set-offs, counterclaims, and other defenses which Company is or may be entitled to arising from or out of this Agreement.

22. SURVIVAL: The representation and warranties and obligations of indemnity set forth in Article 13 of this Agreement shall survive the Agreement for a period of two (2) years following the termination or expiration of this Agreement.

23. HEADINGS: The headings of the paragraphs and sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective as of the day and the year first above written.

"SUBCONTRACTOR""COMPANY"

_____

_____

DATE:

_____

Your name_____ (please print clearly)

Date:_____

connection with services performed for the company belong to the company, not the subcontractor.

Training

Training the subcontractor can be a double-edged sword. Many of the governmental agencies that decide whether a worker is an employee or a subcontractor — such as the IRS and the state unemployment insurance agency — generally state that employees receive training from employers, but subcontractors receive no training from those who purchase their services. A subcontractor is usually hired because no training is needed. In general, when hiring a subcontractor, the business owner is under the impression that the subcontractor will possess special skills, knowledge, and proficiency and that training is irrelevant. The IRS does recognize that some training may be necessary with subcontractors. An employer can provide a short orientation to company policies without jeopardizing the worker's status.

Subcontractors should follow certain guidelines while completing a project. These require that the owner train the subcontractor to produce a work product that meets company requirements and expectations. For example, a

specific format that should be drafted in letter format rather than memo format may be required for the timeline or analysis reports.

Consider the following example of a situation in which training is required:

> One of the LNC owner's long-time attorney clients has sent a large case that contains multiple hospitalizations. This attorney needs all the medical records organized and paginated, and a timeline chronology that is general as well as specific. The medical records fill an entire banker's box and the deadline is in 2 weeks. The owner is currently working on a variety of other smaller projects as well as preparing for a trial scheduled to begin in less than 6 weeks.
>
> After appraising the situation, the owner decides to use a subcontractor to assist in this new project. The owner contacts the local LNC subcontractor, determines availability, discusses fees, and both parties sign the appropriate contracts. The training program will consist of reviewing the attorney's preferences, focusing specifically on how this attorney wishes records to be organized and timelines formatted. The owner reviews requirements for providing periodic updates and deadlines. The training concludes by giving the medical records to the subcontractor.

Setting Deadlines That Subcontractors Can Meet

When working with a subcontractor, it is always beneficial to explain the work project in great detail at the onset. By being explicit in the beginning, the owner is helping to ensure that the subcontractor will be able to follow the explanations and possible suggestions and will be able to understand exactly what is desired. Consider that the project is going to take longer because of the initial learning curve when a neophyte subcontractor is used. Proficiency is an evolving process. Repetition is the key for every project or task. Allow enough time to accommodate the neophyte's learning curve.

Establishing Strong Relationships with Subcontractors

A key to developing good relationships with subcontractors is to make sure that they know that the LNC business owner — not the attorney — is the customer. Some LNCs have developed a level of trust in their subcontractors to permit them to meet directly with the clients. In this situation, it is extremely important that the business owner inform all parties (client and the subcontractor) that the owner is the primary contact. The subcontractor should be instructed not to discuss fees, including how much the subcontractor is paid and what the company is charging for these services. The risk of permitting the subcontractor to meet directly with the attorney is that the attorney will see an opportunity to reduce costs by hiring the subcontractor

away from the LNC business owner. A high level of trust and ethical behavior is imperative in this situation.

Dealing with Difficult People

Conflicts are inevitable. The owner's ability to handle large and small conflicts is reflected in general management skills. Handling difficult people with tact and finesse may come as second nature to one person and may need to be honed and developed by another.

When to Ignore and When to Confront

The LNC owner who avoids conflicts is setting the company on a disastrous route. Ignoring a subcontractor who is not performing properly reinforces that person's unfavorable work habits. Another subcontractor who must fill in for that person will begin to resent covering for the colleague's inappropriate work habits. Some rules may help the owner decide when to confront. The owner should confront the behavior when (1) the subcontractor's performance impedes the owner's goals or the success of the business or (2) the subcontractor's performance or problem causes the owner anxiety every time it occurs.

The owner should consider whether he or she has been contributing to a problem displayed by a subcontractor. Keep in mind that the key to getting someone to change involves what is said and the manner in which it is said.

Others cannot read minds. Do not assume that a person knows what is expected if there are no explicit explanations. Do not condescend. Keep the tone firm and direct. State the facts succinctly and do not dwell upon them. Frame the concerns in a positive way, focusing on how to make improvements. Consider the subcontractor's self-esteem. Finally, have a clear plan in mind. Once the problem has been explained, discuss plans to remedy the problem and the period in which change must occur.

The contractor and the subcontractor are accountable to the client. The owner cannot walk away from mistakes. Admit a mistake early and, when possible, notify the client before the client notifies the owner. Giving bad news is very hard but it is even harder hearing it. Be honest, do not make excuses, and take full responsibility of the error. Determine what needs to be done to correct this mistake. If a mistake occurs, the owner may wish to offer a lower fee for this case.

Supervising Subcontractors

Ideally, the subcontractor is someone with whom the owner has had a working relationship within the recent past. However, this is frequently not the

situation and the owner is forced to hire a subcontractor who is not well known. In this case, even if a very thorough interview and evaluation process took place, the owner must validate that this subcontractor knows how to do the particular work assignment. The owner should manage and supervise the subcontractor's work and seek evidence of the work completed on an ongoing basis. The first approach is to walk the subcontractor through tough scenarios and see how he or she responds.

Unless the subcontractor is working directly with the client, the LNC owner should always request the completed report because he or she contracted for the services. In some instances, expert witnesses who are subcontractors will be asked by the attorney to provide a written report of some type. In this instance, the subcontractor may provide the work product directly to the attorney.

Sometimes the subcontractor does not work out as well as hoped. When this happens, the owner should first determine whether there was a misunderstanding or confusion in outlining the project and the desired result. If the owner determines the cause of the miscommunication and corrects the problem, but the quality of the work product does not improve, experts suggest not to delay making the decision to move on.

Performance Evaluations

Performance evaluations are used by virtually all businesses to monitor the quality of work performed. Develop constructive performance evaluations that reinforce good behavior and provide instruction in areas needing improvement. The performance evaluation should include a written statement regarding the subcontractor's performance.

What and When to Evaluate

The LNC owner should evaluate the subcontractor on the quality of the work product. In order to maintain compliance with IRS regulations (discussed in detail later in this chapter), the evaluation system should measure the *quality* of the product, not *how* the work is performed.

The time for conducting performance reviews varies from company to company. Two of the most common evaluation times are the annual date of hire and a standard time for everyone. Special and more frequent times are usually scheduled for new subcontractors or problem performers, such as 3-month and/or 6-month reviews.

Evaluating subcontractors on the anniversary of their hiring date is common with small companies. Appraising everyone in the organization during the same period is considered a good method. A standard appraisal time provides a snapshot of the company at any given time.

Appraisal forms effectively assist in the evaluation process; they should be concise and simple. Some corporations use a Likert rating scale of one to five. The scale of five allows an average rating to be placed directly in the middle with space on either side for less than average or more than average ratings.

Narrative style forms are also commonly used evaluation devices. When using the narrative form, the evaluator is only required to write a paragraph or two describing the subcontractor's strengths, weaknesses, and potential for advancement. The disadvantage to this form is that it is highly subjective and does not lend itself to comparative analysis.

Performance appraisal forms need to be monitored continuously and revised whenever significant changes occur in the company. Confidentiality must be maintained in dealing with performance appraisals. Evaluation forms need to be maintained in a restricted area and computer access must be highly controlled. It is highly recommended that a lawyer who specializes in employment law should review appraisal forms.

The ultimate goal of an annual performance evaluation is to improve performance. Always rate a subcontractor's performance on the basis of previously established measurement standards rather than in competition with other subcontractors who are performing similar functions. Confine the ratings to the period since the last appraisal. Performance should always be evaluated on what has taken place. Do not let personality influence ratings. Complete the appraisals in a draft form, set them aside for a day or two, and then reevaluate.

Downfalls of Evaluations

Many LNC owners dread conducting performance evaluations because this forces them to acknowledge the failings of their subcontractors and then talk to the subcontractor about them. Few enjoy giving their subcontractor bad news, but the subcontractors need to receive bad as well as good news. If this is not done, the subcontractors will not know the areas in which improvement is needed and thus no improvement will take place.

A good manager keeps subcontractors apprised of their performances throughout the year, often on a case-by-case or project-by-project basis. A good manager provides continuous feedback on the subcontractor's progress. When this is done and evaluation time rolls around, the session is a recap of the things that have already been discussed during the year. Keeping a continuous dialog lets the owner use the formal evaluation to focus on the positive things that he or she and the subcontractor can work on together to get the best possible performance.

How to Terminate a Subcontractor

A decision to terminate a subcontractor should be reviewed carefully. The business owner should discuss all action with the corporate or business attorney. When the LNC has encountered a subcontractor who provides low-quality work product, he or she should make the decision not to use this subcontractor in the future. In order to accomplish this, the owner simply does not send additional work to that subcontractor. Occasionally, the LNC owner may wish to terminate the subcontractor during an ongoing case because of poor performance. In this instance, the owner should have the subcontractor return all documents and records pertinent to the case so that they can be sent to a subsequent subcontractor. The subcontractor may demand payment for on work that has been completed. In this situation, the LNC should be able to provide documentation that oral and written counseling were adequately provided. The LNC owner will need to decide what, if anything, is appropriate payment for the first subcontractor.

Before terminating a subcontractor in the middle of a case, the LNC should review and answer these questions:

- Is this termination due to a breach of the subcontractor's agreement?
- Is this termination due to a breach of the subcontractor's confidentiality agreement?
- Is this termination based solely upon poor work performance?
- Was appropriate oral counseling and written counseling provided to the subcontractor?

Alternatives to Terminating the Subcontractor

A business owner hiring subcontractors should keep in mind that improving the quality of the subcontractor's work product starts by implementing more effective screening practices. A thorough screening process should include completing background checks (as previously discussed) and developing appropriate subcontractor guidelines. Counseling or increased supervision before a problem gets out of hand can help alleviate the need to terminate a subcontractor.

IRS Regulations

Hiring a full-time employee may be a final option for many LNCs. Work load fluctuates greatly and taking on an employee means taking on employer responsibilities. These may include IRS and government regulations; more expenses; and training and management issues, as well as unemployment insurance; workman's compensation; payroll taxes; benefits; and the cost of additional office furniture and supplies. The business may need to generate

more weekly revenue and comply with more governmental regulations than anticipated. Hiring subcontractors allows flexibility. They can be hired for a specific, limited task to gain their specialized expertise, without the cost and obligations associated with full-time employees.

Defining Employee vs. Subcontractor or Independent Contractor

The business owner decides whether to classify a worker as an employee or subcontractor. All of these decisions are subject to review by the IRS and other state and federal government agencies. No single test is used to determine the status of a worker. Each government agency has its guidelines and rules to determine worker status. These agencies make status determinations individually and do not consider what the other agencies have done, although they are often strongly influenced by other decisions, especially if they are negative decisions.

These agencies include the:

- IRS
- State unemployment compensation insurance agency
- State worker's compensation insurance agency
- State tax department
- U.S. Labor Department

Defining a person as an employee rather than as a subcontractor directly affects the business' obligations and determines the forms that the employer must fill out with respect to the worker. Determining whether the person can be characterized as an employee or a subcontractor is absolutely necessary before entering into a formal subcontracting agreement. It is very important that the LNC business owner classify subcontractors appropriately because the penalties for misclassifying can be substantial. The written contract (previously discussed) should have a statement that says the subcontractor will not be treated as an employee for federal tax purposes. If the owner has the right to direct or control the specific tasks and business aspects of the worker's activities, the IRS will probably consider that worker an employee, not a subcontractor. The company does not have the right to control the way in which a subcontractor performs agreed upon services. See Table 5.4 for a summary of some of the key differences between employees and subcontractors. The IRS provides detailed information about federal payroll taxes and its employee/independent classification rules in Publication 15 and Publication 15-A, which are located on the Internet.

The federal government has requirements for the LNC business owner. In the IRS Code, one of the footnotes is called the Employer's Safe Harbor. The Safe Harbor is a set of legal protections designed to keep employers out of the ravages of an IRS audit. It was intended to help employers classify their

Table 5.4 Distinguishing between Employees and Subcontractors

Employer responsibility	Employee	Subcontractor
Make employer contribution to Social Security	Yes	No
Make employer contribution to Medicare taxes	Yes	No
Withhold applicable federal taxes	Yes	No
File Form 1099-MISC with IRS if you pay the person	No	Yes, if $600 or more
Carry worker's compensation insurance for the person	Yes	No
Contribute to unemployment insurance fund and/or tax	Yes	No
Grant employee job benefits such as paid vacation	Yes	No sick leave, holidays, or stock options
Pay employees for overtime	Yes	Generally, no
Right to control how the worker performs the specific task for which he or she is hired	Yes	No
Right to direct or control how the business aspects of the worker's activities are conducted	Generally, yes	Generally, no

workers under the IRS common law test. To receive Safe Harbor protection for a worker, the employer must do all of the following:

- File all required 1099-MISC forms for each individual subcontractor
- Consistently treat the subcontractor as an independent contractor
- Have a reasonable basis for classifying the worker as an independent contractor and not as an employee

Filing IRS 1099-MISC Form

IRS form 1099-MISC should be filed in a timely fashion. This means that a 1099-MISC form must be filed with the IRS by February 28 of the year after the year in which the subcontractor worked for the LNC owner. Sometimes it is unnecessary to file a 1099-MISC form for every subcontractor — for example, (1) when the subcontractor has made less than $600 for the calendar year or (2) when the subcontractor is incorporated.

Consistent Treatment

Consistent treatment means that the owner treats all subcontractors who hold similar positions in the same way. The owner does not withhold federal income, Social Security, or Medicare taxes. The owner does not file a federal employment tax return or a W-2 wage and tax statement for the worker. Consistency is the rule here. Treating every subcontractor in the same way eliminates any conflicts and potential problems with the IRS.

Reasonable Basis for Subcontractor Classification

This term means that the owner had a good reason for the subcontractor classification. The owner can show a reasonable basis for treating a worker as a subcontractor in several ways. These include:

- It is a longstanding practice in the profession of legal nurse consulting to treat similar workers as subcontractors.
- The owner relied on the advice from an attorney or accountant that a specific worker was classified as a subcontractor.
- The owner relied on past court decisions or IRS rulings, or relied on the conclusions from a previous IRS audit of the business.

State Rules and Regulations

Employers in all states must pay and withhold state payroll taxes for *employees*. These taxes include:

- State unemployment taxes
- State income withholding taxes
- State disability taxes

In addition to state payroll taxes, the owner must purchase worker's compensation insurance for all employees.

All states except Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming tax income. The LNC who has employees in a state that imposes state income taxes must withhold the applicable tax from the employees' paychecks and pay it to the state taxing authority. If the individual qualifies as a subcontractor for IRS purposes and no federal income taxes need to be withheld, the owner does not need to withhold any of the previously listed state payroll taxes. The owner also does not need to purchase worker's compensation insurance for a subcontractor.

Because rules and regulations vary from state to state, it is advisable to check with the local state employment agencies or with an attorney and/or accountant pertaining to the rules and regulations that are specific and applicable in the state.

Summary and Final Tips

The legal issues involved in hiring a subcontractor can be complex and varied. The LNC owner should seek resources to help maneuver through this maze. These resources should include an attorney and a tax professional. An experienced attorney who specializes in advising businesses will help answer

questions pertaining to the legal issues of hiring subcontractors. This attorney may assist in drafting employment forms such as job applications and performance evaluations or may provide Internet sources of forms or names of specific publications that may contain forms.

An accountant or tax professional who specializes in business-related tax work can assist in giving advice on the tax effects of using a subcontractor and preparing business federal and state tax returns on a quarterly basis, as well as a on yearly basis for the business and subcontractors.

Many other resources are available to explain tax information. The local library or any bookstore has many self-help tax preparation guides and textbooks. The IRS publishes over 350 clearly written and useful booklets that explain the tax code. The following IRS publications are available on the Internet, in IRS offices, or by calling 800-TAX-FORM (829-3676); they can be downloaded from the agency's Website at www.irs.gov. They contain useful information specifically focused towards hiring a subcontractor:

- Publication 15, Circular E, *Employer's Tax Guide*
- Publication 15A, *Employer's Supplemental Tax Guide*
- Publication 937, *Employment Taxes and Information Returns*
- Publication 334, *Tax Withholding and Estimated Tax*

Keep these pointers in mind:

- Always have a formal subcontractor application.
- Always have a simple and clear written contract or letter of agreement. The contract should include expense reimbursement policy, client contact procedures, deadlines, payment terms, and any related practical matters.
- For first-time subcontractors, demand specific references and check them assiduously. Request a sample of their work product.
- Perform background checks on all potential subcontractors.
- Ensure that frequently utilized subcontractors are not making the predominant portion of their earnings solely from the LNC business because the IRS may consider them actual employees and demand that taxes be withheld and certain reporting be done. This defeats the purpose of hiring subcontractors rather than full-time employees.
- Demand that the subcontractor control the time spent on a specific project. Place a cap on the time that cannot be exceeded without the owner's prior approval. Always negotiate fees. Never pay in advance, but only as work is completed. Never agree to pay a percentage of the project as compensation.
- Do not empower the subcontractor to deal directly with the clients without the owner's knowledge. Ensure that all communications go

through or be approved by the owner. Always identify the subcontractor as a resource employed for the specific project by the firm.
- Never permit the subcontractor to provide contact information to an attorney without the owner's express approval.
- Treat subcontractors with the respect that they deserve; one should treat the subcontractor as one would like to be treated.

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Career Lab: Helping Companies with Their People: www.careerlab.com.

CCH Business Owner's Toolkit; Total Know-How for Small Business: www.toolkit.cch.com.

Contracts: www.contractedge.com.

Fast Company Magazine: How Smart People Work: www.fastcompany.com.

GreenBiz, The Resource Center on Business, the Environment, and the Bottom Line: www.greenbiz.com.

George Mason University, Virginia, Center for Service and Leadership: www.gmu.edu/student/csl/delegation.html.

Grote Consulting; Strategy-Based Performance Management: www.performanceappraisal.com.

Harvard Business School: www.hbs.edu.

HR Zone; Your Guide to Human Resources on the Web: www.hrzone.com.

Internal Revenue Service: www.irs.gov.

Invisible Hand Soft Wear: www.quickforms.net.

Leader to Leader Institute: www.pfdf.org.

Leader Values: www.leader-values.com.

Management First: www.managementfirst.com.

Net Working Times: www.networkingtimes.com.

Service Corps of Retired Executives: www.score.org.

Society for Human Resource Management: www.shrm.org.

The Work911: www.work911.

The Working Manager @ ManagementLearning.com Ltd: www.managementlearning.com.

United States Small Business Association: www.sba.gov.

ZPG Performance Measurement Resources: www.zigonperf.com.

Working with Employees

6

ROSE CLIFFORD

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Introduction

The majority of independent legal nurse consultants (LNCs) start out small, working from home by themselves while maintaining their clinical practices. After hours, they are able to maintain a balance between billable and non-billable LNC time and tasks. However, as the consulting practice grows, eventually the LNC can no longer handle all the tasks necessary to run a successful home-based practice. Time becomes a huge issue. Performing nonbillable administrative, clerical, and marketing tasks soon becomes the

cause of stunted growth. It is at this point that the legal nurse consultant begins to evaluate the need for assistance. When the available time to review cases is compromised by the ability to run the office efficiently, it is appropriate to consider hiring employees. The continued growth of the practice depends on how well and quickly the LNC can work through this crucial issue.

Purposes of Hiring an Employee

Hiring employees is a twofold endeavor. First, it is important in order to move the practice to a higher income level; however, at the same time, it produces new challenges of searching for, hiring, and managing employees. This initially entails the use of more of the LNC's time. Concerns about employee proficiency, confidentiality and deadlines, and the ultimate cost can be overwhelming. However, consider the benefits. The purpose of hiring an employee is to help create time for the owner to grow the LNC practice. Employees should be hired who have skills, experience, and knowledge beyond the owner's skills.

In his book, *The Small Business Start-Up Guide* (2004a), Robert Sullivan (on line), an author and frequent lecturer on starting small businesses, suggests hiring "individuals who are smarter than you are in what they do. The reason you hire employees is to extend your expertise or perform tasks you cannot perform yourself." Skilled employees will help increase the business' efficiency by allowing the LNC to focus on providing LNC services that are billable.

The assistant (employee) handles nonbillable duties such as answering the phone, faxing, filing, bookkeeping, and sending out the mail. Hiring a nurse as an employee is a way to expand the legal nurse consulting services and case review time. The goal is to create a positive environment within which to serve attorneys in a timely manner and ultimately grow the practice through the assistance of well qualified and highly skilled employees.

Overview

A number of matters must be considered when a business owner decides to employ individuals. Who is going to be hired? What is he going to do? When is he going to work? Where is he going to work? How much is he going to be paid? Will he receive benefits? How is the LNC going to accomplish and maintain all this? Will the addition of an employee exceed the firm's limitations? Will an employee be comfortable working in a home office environment as opposed to a large corporation?

Start by thinking about who would be most compatible to work with the firm's mission and services. Consider the location of the business. If it is home based, how much additional space will be required by an employee? Do zoning regulations dictate what percentage of the house can be used for a home business? A home-based business practitioner is hiring a relatively unknown individual to come into the home. Will this adversely affect a spouse or child? Will this individual be intrusive? Be sure to search for the right individual who will complement the owner, the family, and the working styles.

Give some thought to the tasks that the employee is going to be doing. Will they be clerical, bookkeeping, or administrative in nature? Will any personal assistant tasks, such as running errands, be involved? Certainly, good organizational skills are needed in assisting and maintaining the office and in expediting the case flow. Is the employee going to be answering the telephone? How someone answers the phone is reflective of the LNC practice. An employee with a cheerful attitude, a smile, and a good voice is a great choice to be the first line of communications with attorneys.

A bigger hurdle to consider is how much to pay the first employee. One option is to start small at minimum wage and perhaps part time with no benefits to allow the business time to ease into the realities of hiring an employee and all the associated complex ramifications. Hiring a graduating high school student going on to college and looking for a summer job might be an inexpensive way to explore the venture of hiring the first employee. On the other hand, given the amount of time to train a new person, some LNCs start with parents of school-age children who want a part-time job while the children are at school.

Employees are the backbone of an LNC practice. Little would get done without them. They do all the behind the scenes work and preparation. It is important to view the employees as assets to the firm. They are what will make or break the business in times of stress and difficulty. Well-trained employees are taught from the beginning to look immediately for solutions to the many challenges that they will inevitably face. Employees who see the problems and identify solutions are worth their weight in gold. It would be a shame not to value them from the start for it is through their insight and strength that the LNC practice will survive and grow.

Determine the Need for Hiring Employees

In determining the need to hire an employee, the LNC needs to assess whether the business can financially support an employee. Can the LNC owner afford to pay the employee? Does the LNC have enough work for the employee to do to justify the time and expense necessary to hire and keep an employee?

It is a huge responsibility that could be more costly than the LNC is presently prepared to handle.

Realities of an LNC Business

At some point, the LNC owner must choose between maintaining a small solo practitioner practice or deciding to grow beyond the size of solo practitioner to the size of a small or even large LNC firm. Although making that business decision is truly exciting, it brings with it a whole range of responsibilities to seriously consider. One of these responsibilities is hiring and working with employees and its consequences. The consequences are real and can be devastating. According to a March, 2002, article posted on the Michigan State Webpage entitled "Starting a Business in Michigan — Hiring Employees":

> Employees add another layer of complexity to your business that requires careful consideration and planning. It is important to hire the right people, train them well, keep them happy so they will stay, and be aware of taxes and legal requirements. It is wise to consult an accountant and attorney to ensure that good record keeping systems are in place, all the necessary paperwork is completed and legal requirements are met before hiring employees… (www.michigan.gov).

This applies in any state and to hiring even a single employee.

Hiring Issues

The "Real" Cost

According to well known small business expert, Robert Sullivan, "hiring employees may be necessary, but the responsibility of having employees is awesome." In the third edition of his book, *The Small Business Start-Up Guide* (2004a), Sullivan describes the *real* cost of an employee: "add to the employee's wages the cost of benefits expected by most employees (including health insurance which is getting more expensive daily), the cost of your additional tax and insurance liabilities plus administrative time, and suddenly your $20,000 per year secretary is costing you $50,000!" He continues by noting that "the 'real' cost of an employee is approximately 2 times his or her yearly wages."

The real hiring issue is: can the business afford and support an employee? Should the employee be full-time or part-time? Do other alternatives exist such as better time management skills, temporary staff services, or subcontracting?

Required Paperwork

The required paperwork with specific deadlines must be met even if the LNC is the sole employee of the consulting firm. The paperwork includes state and federal payroll requirements. It encompasses federal and state income tax withholding and, in some geographic locations, includes local withholding tax. Required paper work also includes federal Social Security tax (FICA), federal unemployment tax (FUTA), and individual state unemployment tax. An accountant or a professional payroll service can provide this service.

Insurance

A number of types of basic insurance should be considered when deciding to hire employees. The Michigan State Website lists the most commonly used types of insurances in an article entitled "Starting a Business in Michigan — Insurance" (2002 www.michigan.gov). They are listed as a starting point from which to evaluate the needs of the business:

- Liability insurance
- Property insurance
- Worker's compensation insurance
- Business interruption insurance
- "Key man" insurance
- Automobile insurance
- Officer and director insurance
- Home office insurance

It is advisable for the LNC to contact several insurance agents to discuss which insurances are necessary. The Michigan State Website goes on to say that "insurance is a very competitive business. Be sure to contact more than one agent. Shop around to get the best coverage for the lowest price."

Unemployment insurance is defined by most states as insurance that protects workers who lose their jobs through no fault of their own. Unemployment taxes are paid on the wages of each employee during the time of employment. Federal and state unemployment taxes are paid by the employer on a quarterly basis. LNC firms that are employing one or more employees are required to register with the unemployment agency in their state. Some state agencies have specific time frames within which to register. Be sure to check state guidelines.

Interviewing Guidelines

When the LNC is interviewing potential job candidates, it is important to focus exclusively on the necessary skills and experience needed to fulfill the

requirements of the position available. It would be wise for any LNC interviewing for the first time to check with any number of sources that could provide in-depth information on the do's and don'ts of interviewing. For quick reference, the LNC should establish firm policies regarding interviewing guidelines that address appropriate questions to be asked during potential employee interviews. The policies should comply with all state and federal guidelines and laws. This topic is covered in more detail later in the chapter.

Reference Checks

Checking references on a potentially new employee can be problematic. Most employers do not provide much information in fear of potential reprisals. Previous employers generally share the employee's date of hire, dates of employment, and job title. For the most part, they are prohibited from revealing confidential information. The LNC should ask specific questions that can be answered with a quick "yes" or "no" or a simple short response. The SBA suggests sending a written request form requesting a written response. Some questions suggested are:

- How long did the employee work for you?
- Was the work poor? average? excellent?
- Why did the employee leave your employ?

A potential new employee completely unknown to the LNC should sign some type of waiver and hold harmless agreement as part of the application process or as a condition to employment. Previous employers may feel more comfortable in elaborating on references if the authorization is signed. The LNC should enclose it with the formal letter requesting reference information. If not, questions designed to reveal some information would need to be researched.

Credit Checks

Credit checks are rarely performed as a condition of employment in the LNC firm due to the private type of casework reviewed. However, if the firm provides certain types of case reviews for the U.S. government, such as Medicare fraud reviews, an employee may be required to submit to a credit check as a condition to receiving that type of case review. All employees — clerical or nurse reviewers — who will have contact with the medical records or confidential information related to the case will be requested to submit to a credit check. In that instance, the LNC employer would need to provide written notice to the prospective employee that a credit check will be necessary to the terms of employment. The interviewees in turn should give consent in writing.

Background Checks

Any employer has the right to do background checks on potential new employees. The employer has the right to review public information such as arrest and conviction records. Whether an employer can use such information to make hiring decisions varies from state to state. Some states do not allow arrest records to be used in hiring decisions. Most states allow decisions based on convictions. Some states allow hiring discrimination based on the kind of position applied for, the type of work that the applicant will be doing, or the type of business. The LNC should check with an employment attorney to see what state laws allow. If applicable, be sure to mention that the position is in a home-based office. There may be more flexibility in the materials used to make hiring decisions.

Hiring Individuals with Disabilities

Some very specific rules in hiring individuals with disabilities apply to any business providing a service to the public. The LNC should research the guidelines that enable individuals with disabilities to work within the parameters of the government guidelines and still remain eligible to receive their disability income. Some individuals cannot afford to lose their disability income due to the nature and severity of the disability. They may be in remission at times and able to work, and at other times suffering from a worsening of their condition and not able to function.

The Department of Labor's Office of Disability Employment Policy would be a logical place for an employer to begin looking for information. The Social Security Administration's Employers' Web page would be another good research site to explore. The question is not so much whether to hire an individual with a disability, but rather how to hire him part-time without jeopardizing his disability income. The one thing that the independent LNC employer should not do is to hire an individual with a disability and pay him "under the table."

The Decision

The ultimate decision of whether to hire the first employee is huge. The LNC should give careful consideration to this decision. Identify all the advantages and disadvantages, the extra expenses, and the ultimate responsibilities. Evaluate alternatives to hiring an employee such as part-time help, temporary services, and independent service contracting. If all avenues lead back to hiring, proceed by hiring the best candidate and treating that person well. Remember that this individual represents the LNC and the LNC's firm.

What the LNC Needs to Know about the Law

Many federal and state laws affect an LNC employer hiring one or more employees. The laws are complex, numerous, and forever changing. The extent of the law is far reaching and beyond the scope of this chapter. Some of the major laws are listed by the U.S. Small Business Administration in a publication called *Employees: How to Find and Pay Them* — PM2. Some of the laws are:

- Immigration Reform and Control Act of 1986
- Civil Rights Act (Title VII on employment discrimination)
- Equal Employment Opportunity Act
- National Labor Relations Act
- Fair Labor Standards Act
- Employee Retirement Income Security Act (ERISA), Pension Reform Act of 1974
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Occupational Health and Safety Act
- Right-to-Know Chemical Act
- Federal Rehabilitation Act of 1973
- Age Discrimination in Employment Act
- Drug-Free Workplace Act of 1988
- Vietnam Era Veterans Readjustment Assistance Act of 1974
- Worker Adjustment and Retraining Notification Act of 1988
- Americans with Disabilities Act of 1990

Only a few of these laws will be addressed briefly to raise awareness of the applicable laws, touch on some of the pertinent issues, and provide references for the LNC employer to be aware of and to begin researching. It is highly advisable that the LNC hire an employment or business attorney and an accountant to assist in this process.

Federal Laws

Federal law prohibits a prospective employer from discriminating against any individual based on age, race, sex, religion, or national origin. An employer may ask job-related questions, but may not ask personal, private, or medically related questions that have nothing to do with a potential employee's ability to perform the functions of the job.

IRS Tax Laws

A general rule is that anyone who performs services for the company is an employee if the LNC controls what will be done and how it will be done.

The Internal Revenue Service requires many payroll-related reports and payments. Chapter 5 in this text, *Working with Subcontractors*, covers in more detail the difference between employing an employee and employing a subcontractor.

Occupational Safety and Health Act (OSHA)

The Occupational Safety and Health Act applies to work performed by an employee in any workplace in the U.S., including a workplace located in an employer's home or in an employee's home done under the direct control of the employer.

All employers, including those who have home-based offices with employees, are responsible to comply with OSHA's safety and health standards. The purpose is to protect employees from the risks associated with the performance of their work. The employer has a duty to ensure a work environment free of foreseeable hazards that cause or are likely to cause death, illness, or serious physical harm. Although home-based workplace inspections are not ordinarily done, Richard Fairfax, director of OSHA's compliance programs, has indicated in *OSHA Standards Interpretation and Compliance Letters 11/15/1999 — OSHA Policies Concerning Employees Working at Home* (1999):

> …from time to time, they have visited private homes…. This letter addresses only the employer's responsibilities under the OSHA Act. Depending on what kind of business the "at home" employer is engaged in, he or she may have additional responsibilities under other federal labor or environmental laws, as well as under state laws of general applicability, such as public health, licensing, zoning, fire and building codes, and other matters.

It would be prudent to discuss the LNC firm's needs to comply with OSHA standards with the firm's attorney.

Understanding How the Americans with Disabilities Act Applies to the LNC Employer

The purpose of the Americans with Disabilities Act is to protect qualified individuals with disabilities from discrimination in employment and in access to public services. Many individuals with disabilities are able to perform the essential functions of the job with reasonable accommodations. It is unfair and unlawful to deny them employment based solely on their disability.

An individual with a disability is defined by federal statute and by case law. A disability is defined as a physical or mental impairment that interferes

with at least one of life's major functions — for example, walking. In addition, legally recognized disabilities include, but are not limited to, AIDS, heart disease, and hearing impairment. There are some very specific questions that a potential employer can and cannot ask an individual with a disability. The law clearly spells out that the LNC can ask only job-related function questions and may not ask a potential employee with a disability if he or she has a disability. Also, the LNC may not ask any medically related question related to or not related to an obvious disability.

Be sure to visit the Social Security Administration's Employers' Web page and the Department of Labor Office of Disability Employment to find more information on and policies specific to hiring individuals with disabilities.

The Employee Retirement Income Security Act (ERISA)

ERISA was enacted in 1974. It governs the administration of private sector employee benefit plans. ERISA applies to most employers who voluntarily set up employee benefit plans; these include

- Health care benefit plans
- Dental plans
- Disability plans
- Pension plans
- Death benefits
- Prepaid legal service plans
- Vacation
- Daycare
- Scholarships
- Educational tuition reimbursement plans
- Training benefits

These are sometimes referred to as welfare plans. Pension plans are established to provide retirement income or offer an employee a means by which to defer income. An employer has the option to choose which of these benefits to provide, within the constraints of state laws.

ERISA sets forth standards to assure that employee benefit plans are established and maintained in a just and financially sound way. It ensures that employers keep their promise of providing employee benefits plans as they have agreed to do.

The Labor Department's Pension and Welfare Benefits Administration and the Internal Revenue Service have authority over employers who provide employee benefit plans. Their primary responsibility is to make sure that employees receive the benefits that they were promised as part of the terms of their employment.

The Health Insurance Portability and Accountability Act of 1996 made changes to ERISA concerning having to provide for improved portability and continuity of health insurance coverage provided to employees. These changes included provisions relating to exclusions of preexisting conditions, rights to special enrollment, and prohibition of discrimination against individuals based on their health status.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) gave certain employees and their beneficiaries the right to continue their health care coverage at their own expense upon separation from their employer. COBRA is addressed in Title I of ERISA. This applies to employers with group health care plans with 20 or more employees. There are some strict rules of notification that employers must give to plan administrators, who in turn must notify their qualified beneficiaries.

ERISA is a very complicated and expansive act. Certain of its provisions supersede state and local laws as they relate to employee benefit plans. At the same time, it holds certain state and local laws from ERISA preemption. For more information, check with an ERISA attorney, contact the Labor Department's Pension and Welfare Benefits Administration (PWBA), Division of Public Affairs, or visit their homepage at http://www.dol.gov/pwba/. The PWBA has changed its name to the Employee Benefits Security Administration, but its Web address remains the same. In addition, the U.S. Department of Labor's Website has frequently asked questions related to ERISA at www.dol.gov/dol/topic/health-plans/erisa.htm.

State-Specific Laws

All states have individual state labor laws that vary. The state labor laws address fair labor standards such as minimum wage, minimum rest periods, and minimum length of meal periods required. This includes information regarding federal vs. state family medical leave laws. A list of all the states and their individual state labor offices with contact information is located online at www.dol.gov/esa/contacts/state_of.htm.

Hiring Practices That Work

Attributes of an Ideal Employee

An LNC practice is only as good as the front line employees who meet, greet, and interact with clients. To manage the growing needs of a firm effectively, the LNC must hire the right people. This is critical for any LNC firm or a solo practice firm. Hiring the wrong employee is of a greater consequence to the smaller firm in terms of time, money, and lost productivity. Look for

someone to complement the LNC's skills and experience. Search for a person who has these attributes:

- Honesty
- Sincerity
- Integrity
- Work ethic
- Humor
- Intelligence
- Happy disposition
- Willingness to go the extra mile
- Not intrusive
- Easy to get along with
- Willing to do the work
- Able to work independently
- Intuitive skills
- Knows his abilities (he knows what he knows and what he does not know)
- Follows directives well
- Knows when to ask questions
- Extremely organized
- Likes to be around other people

How to Choose the "Correct" Employee

Choosing the correct individual for an LNC firm is always a challenge. There is no perfect way to accomplish this. One way is to determine the appropriate hiring process that would be most effective to meet the firm's needs. The interview is a very important part of this process and should be one of the final steps in choosing the correct employee. Completing all the preceding steps will directly influence how successfully the interviews progress.

Become Familiar with Specific Steps in the Hiring Process

The hiring process consists of vital steps in finding the correct employee for the LNC firm. Consider the following overview of the process:

- Determine the essential functions of the job and the exact criteria important for the available position. Do a thorough analysis of what the job will entail.
- Write out the job description. Be specific in the duties required to fulfill the position based on the analysis.
- Next, identify the hourly wage for the position and whether it includes benefits. Make sure that it is competitive with similar external positions

available in similar LNC firms or similar small consulting practices. The hourly wage should be proportionate to the level of responsibilities of the position.

- Identify how to find the correct and qualified employee. Determine where to find such an individual and the time period within which the search will occur. Identify cost-effective methods of searching. A small, simple ad in a local paper may be reasonable. Prepare simple, direct ad copy. Be careful that the ad copy does not exclude a certain group of people. To be safe, the LNC owner may want the firm's attorney to review the ad. Also, spread the word of the available position. Tell friends, neighbors, colleagues, and attorney clients.
- Gather curriculum vitae or resumes from each applicant. Review educational qualifications, skill level, professional activities, and outside interests. Depending on the position available and the duties entailed, consider nonmedical individuals. Review the resumes further for content, typos, and consistency. Because proofreading is such an integral part of an LNC practice, consider setting aside any resume with typos. Experience has shown that the inability to proofread one's resume translates into the same deficit in an LNC business. Select the top qualified applicants to interview.
- Based on the job description, interview the most qualified individuals.
- Have the applicant sign a release so that references can be checked. Then follow through and check each reference. Verify dates of employment and salary as written on the application form. Ask each previous employer, "Would you rehire this individual?"
- Allow some time to pass while considering the best applicants so as to reflect on the perfect fit.
- Hire only the best individual for the position on a trial basis.
- Allow for a reasonable trial period within which the employer or the employee can freely decide that this is not a good match.

Prepare for the Interview

Conducting a successful interview depends on knowledge, experience, and skill. Knowing the do's and don'ts of conducting such interviews will be a major factor in achieving the intended results of hiring the most qualified and compatible individual. What are the "do's" of conducting a quality interview?

- Know ahead of time the desirable qualities needed in an individual.
- Know the details of the job description of the position.
- Prepare a list of standard interview questions relating to the individual's education, skills, and experience. Ask questions that objectively

reveal the individual's character, abilities, and past employment responsibilities. Ask why the applicant is interested in the position and why he or she is considering leaving the last place of employment. Provide the firm's Website address to the applicant at the time of scheduling the interview. Ask the applicant at the time of the interview for feedback regarding the Website. This technique will reveal whether the applicant took the trouble to go to the Website.

- Develop a flow sheet that will help chart the individual's pros and cons, strengths and weaknesses as they relate to skills and abilities to perform the essential functions of the job. Use it to analyze and compare applicants to help identify the best candidate.
- Schedule the interviews far enough apart to allow sufficient time to review each individual's curriculum vita and to see each candidate independent of the others.
- Develop or utilize screening tools to ensure that the candidate has a basic grasp of spelling, grammar, and proofreading. (Examples of tools can be found in Chapter 5.) Screen basic skills before beginning the interview.
- Space the interviews out so as to allow preparation and recovery time.
- Set a reasonable amount of time for the interview to afford each individual sufficient and equal time to present qualifications.

Collect Salient Information during the Interview

The interview is an event in which salient information is shared and collected. The U.S. Small Business Administration notes in the publication, *Employees: How to Find and Pay Them,* that "the goal of the job interview is to find out as much as you can about the applicant's work background, especially work habits and skills." Begin by asking a few general questions such as those suggested by the U.S. Small Business Administration:

- What did you do on your last job?
- How did you do it?
- Why was it done?

Share general information about the firm and the role of an LNC. Tell each individual applicant how and why the LNC practice was started and plans for the future. Inform them about clients in a broad sense. If the firm handles personal injury claims, advise candidates that photographs of injuries may be contained in the files. Listen for any negative statements about attorneys or "suit-happy" plaintiffs. Share in writing the firm's mission statement and how the applicant would be a part of the mission. Then begin asking interview questions.

Note how long it takes for each candidate to process the interview questions and whether he or she responds in an appropriate manner. Does the interviewee know what he or she is talking about? One way to test claims of computer knowledge is to ask the candidate to identify the operating system or version of the word processing software used. Ask what software is used and for what purpose. Lack of knowledge will be evident if the candidate cannot answer these questions. Note whether he or she has a delayed response time or whether questions are answered directly. Did the candidate interrupt before the question was finished? Did the answer avoid the question?

Pay particular attention to obvious or subtle behavior patterns. Past behavior is often indicative of future behavior. Take notice whether the candidate answered questions with details or with more general nonspecific responses. This may be indicative of the future approach to work. Often, listening and watching how an individual responds to an interview question or request gives insight into how he or she will respond in the future. Notice whether the interviewee is defensive in response to questions. Sometimes, a defensive response indicates apprehension about not knowing what to do or how to answer, or fear of being wrong. Sometimes it indicates that more clarification is needed in order to answer. Note, too, whether the individual verbally processes the question out loud prior to answering it. These are all clues of future work habits.

Although it is important to share some information about what the firm does, try not to offer too much detailed information. An individual who is not selected will not have confidential information. Also, this will prevent formulating answers that imitate or merely mirror the needs of the firm without a true indication of the depth of abilities.

Focus interview questions on the individual's past experience and knowledge. For example, if the firm position is that of administrative assistant, requirements would be high motivation to get the tasks accomplished; a need for extreme organization; professionalism; and unwavering ability to handle multiple task requests that may require diligence in completing. Ask, "How do you keep track of important tasks that are in the process of being completed yet lack one or two requirements? Do you have a system? How do you keep track of your own personal and professional schedules? Do you calendar future deadlines? In the past 2 years, what was your most effective method of multitasking your required duties? What were the challenges?"

Be sure to ask specific interview questions regarding past or present problems that the business is experiencing with which the individual may be asked to assist. Focus on the individual's honesty in responding and on how he or she may have handled similar situations in the past. For example: "As my administrative assistant, you may be asked to handle an unhappy attorney who might be brisk, direct, or abrupt. Have you had any experience dealing

with difficult attorneys or doctors? Have you had any experience in dealing with difficult people? Who was the most difficult and how did you handle it? What were the circumstances and how was it resolved? Can you remain calm, polite, but firm in your approach to handling a difficult attorney? Can you give me an example of how you would handle an attorney who insists on speaking to me right away and I am out of the office?"

Take notice of how the individual responds to questions. Did she smile? Did she listen carefully? Did she ask for direction on how you would prefer her to handle the difficult situation? Notice her verbal and nonverbal responses. Did she attempt to answer the question carefully and thoughtfully, or did she become evasive? Note the grace with which she responded. Was she diplomatic in her inquiry and response? Does she respond calmly under stress or does she have a tendency to be explosive?

Encourage questions. Listen very carefully to any concerns or questions that the individual may have. Clarify why the concerns exist, what the primary concern is, and why the candidate is asking certain questions. Is it something that would interfere with the ability to get work done or is it something that is reasonable and can be worked around, such as requests for specific time off?

Be sure to take notes with each interview. Notes will help the interviewer remember the individual candidates. Record information that will set individuals apart from one another. Document information that directly correlates to the qualities sought as they relate to the specific requirements of the position. Note the applicant's ability to handle difficult situations.

Observe the individual's demeanor during the interview. Although it is normal to see some nervousness, determine whether the interviewee is able to answer questions. Watch for a barrage of words in response to a question or, conversely, a reluctance to talk. Listen for negativity about a former job or employer. Be wary of an applicant who exudes an air of desperation to obtain a job. Observe for signs of depression. Consider how an individual will fit in with other personalities in the work group. Ask whether the applicant has ever been terminated from a position and why. Be wary of the person who asks about the salary before an offer of employment is contemplated. Look for the person who expressed interest in the nature of the business.

Enter the information into a flow sheet immediately after each interview. This will help keep the interview impressions organized and in a form that will be easy to analyze and refer to in the end. Consider a rating system for each of the position requirements and skill requirements. Assigning a number scale may make the best choice more obvious.

Present Professionally

Always dress professionally for the interviews or at least appropriately to the LNC practice environment and how employees are expected to dress in the

work place. Set the tone for the interview. Even though it may be a home-based business, it is always a professional business setting with a tone that reflects business. Set the framework for the interview. Orient the individual to the framework of the interview, duration, and plan. Encourage the candidate to relax, and orient him or her to the surroundings. Indicate the focus, what is being sought in terms of an employee, and that the interviewer taking notes during the interview process does not intend to bother the applicant.

Let all the interview candidates know what the job entails, the specific duties, and requirements. Ask the candidates how they think they can fulfill the firm's needs and the position requirements. If an applicant expresses doubt about ability to fulfill the requirements of the job, do not attempt to convince him or her otherwise. The assessment is probably correct.

Show a sincere interest in every individual who is interviewing. Be honest and fair with each. Conduct each interview in the same way. Ask each the same questions so that answers can be compared. Always be polite and courteous. Display a sincere respect for each candidate. Be sure to select a private place for the interviews; it is too distracting to have constant interruptions during the interview process and reflects badly on the firm. Always begin interviews on time and as smoothly as possible. Welcome the individual with a thank-you for taking the time to interview with the firm. Allow sufficient time for the interview process. Rushing through an interview will skew the perceptions of the individual. It is also not fair to the LNC or the candidate.

Advise the applicant in advance about how much time will be spent at the interview. For example, skills testing may take 30 to 45 minutes, followed by an hour for the interview. This advance notice will permit the applicant to plan on how to devote the necessary time for the interview. Show an honest appreciation for any of the accomplishments that the candidate shares in the interview or that are listed on the resume. Do not speak down to the individual, and do not argue. Always end the interview on time and on a good note. Thank the individual for taking the time to interview and for his or her interest in the position. Say when the decision will be made.

During the Interview

The SBA Website located at www.sba.gov/managing/growth/interview.html has an article entitled "The Interview Process" (2004), which lists the following steps:

- Immediately attempt to establish a rapport with the candidate by breaking the ice. For example, ask about his experiences in a particular industry or geographical location (refer to his resume).
- Promote a relaxed environment with free-flowing conversation.

- Do not dominate the discussion by talking too much. Many experts use the 80/20 rule — the LNC talks 20% of the time and the candidate talks 80% of the time.
- Politely probe the candidate for information by asking open-ended questions that will provide insight into the candidate's values and traits.
- Ask structured questions that will require some thought on the part of the candidate.
- Listen carefully to the candidate's answers. If he does not provide specific results, probe until he does.
- Explain the selection process to the candidate. Offer realistic time frames.

What Not to Ask When Interviewing

Some very specific questions cannot be asked of any individual during an interview. Generally, do not ask any questions that may appear discriminatory in nature or may be interpreted as discriminatory in nature. According to Sullivan (2004a) in his chapter, "Hiring and Working with Employees," in his book, *The Small Business Start-Up Guide*, do not ask applicants for any of the following information:

- Age or birthplace
- Ethnic origin or nationality
- Race or religion
- Marital status or number of children
- Disabilities
- Arrests

For example, a potential employer cannot ask:

- Do you have any medical condition that would interfere with your ability to perform the job?
- Do you have low back pain?
- Have you ever received worker's compensation?
- Are you on disability?
- How long have you been disabled?
- How long are you planning on being single?
- Are you engaged?
- Do you have plans to marry in the near future?
- Are you pregnant?
- What are your religious beliefs?
- Do you go to church, temple, or synagogue?

- How old are you?
- What is your sexual preference?
- Where were you born?

Sullivan explains that "there are numerous state and federal anti-discrimination regulations that you must not violate." He suggests attending a local seminar on hiring and firing. The LNC may check the business section of the local newspaper for listings.

Sullivan suggests that these rules also apply to any application form used in hiring an employee. He notes that a prospective employer "cannot ask for an applicant's social security number, gender, race, labor union membership, marital status, height, weight, and more." In fact, he advises a prospective employer to have an attorney review the application first before using it to find a new employee. Alternatively, office supply stores sell job applications that meet antidiscrimination standards.

For more information, see:

- The U.S. Equal Employment Opportunity Commission homepage: http://www.eeoc.gov/.
- The Americans with Disabilities Act (ADA) homepage: http://www.usdoj.gov/crt/ada/adahom1.html.

Employee Information

Important employee information is initially gathered on the employee application form and maintained, if hired, as part of the employee file. The employee application form is a screening tool that gives preliminary insight into the abilities of the applicant and his skills and past job-related experiences. It gives the LNC the basis from which to screen the applicant initially and, ultimately, leads to a more formal process: the interview. It is a good foundation from which to begin the interview. The application form is subject to the same rules and regulations as the interview process. The U.S. Small Business Administration lists some of the applicable laws in its publication *Employees: How to Find and Pay Them*:

- Civil Rights Act of 1964 prohibits discrimination in employment practices because of race, religion, sex, or national origin.
- Public Law 90-202 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 70.
- Federal laws also prohibit discrimination based on physical handicap.

- Public Law 99-603 prohibits the hiring of illegal aliens and requires that the LNC maintain certain documents indicating proof of citizenship or alien-worker eligibility from employees.

The U.S. Small Business Administration has a sample employee application form that is available to copy. It is a good place to start. See Figure 6.1 for an application for employment. The LNC may want to alter the basic application form and make it more applicable to hiring an employee specific to the LNC business.

Employment Information

Employment information can be gathered on a second form in hard copy or as information added to the firm's computer database under individual employee files. See Figure 6.2 for an example of an employee information form.

Employee File

All covered employment offers should be in writing, be reviewed by an employment attorney in advance, and spell out salary and benefits. The employee should sign the letter to signify his acceptance (Figure 6.3). The employee file should contain information on the employee as it relates to the verification of identity and performance of position duties. Federal regulations (the Patriot Act) require production of documents to verify identity. The LNC should review these requirements and ask the new employee for the appropriate materials. Check the Immigration and Naturalization Service (www.ins.gov) for details. The file should include notes to record significant accomplishments or poor job performances and what was done. The LNC may want to include any employee pay history. Employee files should not be accessible to other employees.

Employee Benefits

Employee benefits are one of the largest costs to a small business. They are an unavoidable overhead expense that is likely to increase steadily despite attempts to control them. Employee benefits are the second most important factor in an employee deciding to hire on or to continue to stay with the LNC firm. Here are some of the benefits to consider providing to employees as the firm grows.

Application for Employment to
[Enter name of LNC firm]
Position _____Administrative Assistant_____

Name _____
Last First Middle
Present Address:_____
Street City State ZIP
Telephone No.: _____
Home Cell
Identification Information:
Social Security No._____ Driver's License No._____
Emergency Contact: _____
Phone: _____
Successful applicants will be required to produce document(s).
Please indicate dates and places you attended school:
High School _____
from _____ to _____ Year Graduated_____
Other training _____
include dates: _____
Name of college _____
from _____ to _____ Degree? _____
Name of college _____
from _____ to _____ Advance Degree? _____
Special skills, accomplishments, awards: _____
_____
_____
_____
_____

Please Be Aware:
Falsification of any information requested may be grounds for refusal to hire or for termination should the falsity be discovered after hiring.
List below all present and past employment, beginning with most recent (include military service, if applicable)
Name & Address of Previous Employer Dates of Employment: From: /To:
Month/Year, Name of Immediate Supervisor & Phone Number, Reason for Leaving Employment, Weekly Salary, List Your Position Title, and Describe Your Work
_____
_____
_____
_____
_____
_____

May we contact the employers listed above? _____
If not, indicate those you do not wish us to contact: _____
_____ _____
_____

Page 2 of 2
Have you ever been convicted of a crime?_____
Have you ever been terminated?_____
(For a nurse) Have you ever been named as a defendant in a suit?_____

Signature _____ Date_____

Please list three references and a telephone number:

Remarks:
_____
_____
_____
_____
_____
_____

FIGURE 6.1 Sample Employment Application

[Enter the Name of LNC Firm]
EMPLOYEE INFORMATION

NAME: _____
START DATE: _____
WORK SCHEDULE: _____DAYS _____HOURS
POSITION TITLE: _____
SALARY: _____ HOURLY: _____
EMPLOYEE ID NUMBER: _____
PREFERRED METHOD OF PAYMENT: PAYCHECK_____DIRECT DEPOSIT_____
BENEFITS: (Mark with an X where applicable)
_____ HEALTH INSURANCE _____ PAID _____ UNPAID
_____ PERCENT OF EMPLOYEE CONTRIBUTION
_____ MONEY PURCHASE OPTION (10%)
_____ PROFIT SHARING OPTION
_____ INCENTIVE COMPENSATION
_____ VACATION TIME
_____ PERSONAL PAID TIME
OTHER COMMENTS:
_____
_____

DATE HIRED: _____ LAST DATE OF EMPLOYMENT: _____
REASON FOR LEAVING: _____

FIGURE 6.2 Employee Information Form

Date

Name
Address
City, Street

Dear **

I would like to take the opportunity to welcome you aboard our team. This employment offer is effective (date). Your hourly rate is ($XX.XX). Hours worked above 40 hours will be compensated as time and one half if compensatory time cannot be taken. Compensatory time should be taken within the same week. All overtime must be approved in advance. The pay period begins on Sunday of one week and ends on Saturday of the following week. Paychecks are issued by direct deposit to your bank account. The workday is defined as 8:30 to 5:00 with an unpaid half hour for lunch.

You are entitled to eight holidays, including January 1, Good Friday, Memorial Day, July 4, Labor Day, Thanksgiving, the day after Thanksgiving, and Christmas. There is one floating personal day. Vacation will consist of 10 days per year, earned at the rate of 5 days per each 6 months of active employment. You must be employed for 6 months before vacation time may be taken. The second 5 days or any portion thereof may be taken after 12 months of active employment. Vacation time must be scheduled in conjunction with the needs of the business and the requirements of other employees. No more than 1 week of vacation time may be taken at once.

You are entitled to 8 sick days per year. You are eligible for 4 sick days or any portion thereof after 6 months and 4 additional sick days after completing one year of employment. Sick days and vacation days can accumulate if not used.

After completing 6 months of employment, you will be provided with medical insurance from a plan of Company's choice. The provisions of the plan may change. A 20% employee contribution will be deducted from your paycheck.

Your employment at Company is at will. Your services may be terminated at any point with or without cause. Modifications of this agreement will not be valid unless put in writing and signed by ** (president) and (employee). You are expected to abide by the company policies and procedures

Sincerely,

President_____ Employee _____

FIGURE 6.3 Welcome Aboard Letter

Medical Insurance Coverage

Good insurance coverage is the primary concern of most employees and a probable nightmare in terms of cost to the employer, especially a small business owner. An advisory publication, *Hold the Line on Staff Benefits Expenses* (2003), addresses this concern. It suggests to "compare health insurance plans to obtain the most value for your healthcare dollar….Switching to managed care plans or HMOs can be your best deal as an employer." It also says to "make coverage contributory by providing full-time employee-only health care coverage; make dependent coverage available at cost." Furthermore, "employees assume part of their healthcare costs. If cafeteria plans are offered, the employee can pay these costs with pretax dollars."

These approaches are applicable to health insurance plans. Other types of insurance plans to consider offering are:

- Dental
- Life
- Disability
- Legal
- Accidental death

Retirement Plans

Besides health insurance, retirement plans are the other big benefit at which employees — especially key employees — are looking when considering employers. *Hold the Line on Staff Benefits Expenses* suggested that small practice employers consider these steps:

- Shift traditional plans to 401(k) plans.
- Shop around to decrease administration costs.
- Communicate the value of these benefits to staff.

By having employees contribute to their retirement plans, employers can save money. Instead of the employer paying all, he or she can save by matching whatever the employee puts in.

Paid Time Off

Hold the Line on Staff Benefits Expenses also discusses the advantages of paid time off. As described in this advisory publication, "the concept of paid time off (PTO) permits employees to earn a certain amount of time off per month — usually 10 to 14 hours — and to use it for whatever reason they wish." The advantage of offering a PTO system encourages employee honesty and allows for better planning for staff absences. The advisory adds that a PTO

system simplifies recordkeeping because only one category of time off is tracked. It also eliminates any incentive for employees to utilize sick days when they are not ill. Paid time off consists of the traditional vacation days; holidays; personal days; sick days; compensation days; maternity leave; and bereavement days.

LNC Firm Policies

Many small LNC firms do not take the time to write down their firm policies. It is wise to do so from the start. The Small Business Association (SBA) Online Women's Business Center (2004) suggests that

> A small family-owned business generally does not require as many written policies as a company with a large diverse workforce. But regardless of the size or complexity of your business, once you hire your first employee it is best to take the time to think through the policies and have at least a minimum list of policies.

At a minimum, the SBA suggests including:

- Statement of the company's goals and philosophy
- Working hours
- Statement of nondiscrimination
- Procedures and policies for absence from work
- Performance evaluation procedures
- Pay periods
- Safety and accident rules
- Use of company property
- Vacation and holiday policies

Employee Dress Code

It is up to the LNC firm to develop policies about appropriate dress codes in the workplace. If the firm does not encourage attorneys to come to the office, an appropriate dress code would be casual to business casual depending on the location of the firm. If, on occasion, the employees will be required to assist an LNC while conferencing with an attorney in his office, the appropriate dress code would be business dress. If an employee is required to assist the LNC while exhibiting the LNC firm's services at an attorney conference, then the appropriate dress would be business dress during the exhibit and casual business dress while setting up and dismantling the exhibit. Written company policies should spell out the required dress for each occasion.

Employee Conduct

Employee conduct should be one of total professionalism at all times no matter the setting, circumstance, or occasion. Employees are representatives of the LNC firm and are to act appropriately in the workplace, in public, or on the telephone conducting firm business. Firm policies should state clearly that employee conduct must be safe and free from any criminal activity such as substance abuse, stealing, or driving without a license. The policy should state that any conduct unbecoming a representative of the firm will be grounds for dismissal if not corrected within a specified period of time.

Grounds for Termination

Recognize that, despite a careful screening process, it is possible to hire a person who does not fit into the firm's environment. In the long run, keeping the employee in the hopes of improving performance may be the wrong decision. An employee can do a lot of damage to a small business in a short period. It is preferable to terminate the employee quickly and continue the search rather than keeping the individual at the firm.

Breach of Confidentiality

During the course of employment, employees become privy to, overhear, or oversee confidential information as it relates to the provision of LNC services such as the review of medical records, specific case information, and attorney–client information or confidential information related to the development of the firm's business practice. All of this information is highly confidential. What is seen and heard in the workplace remains in the workplace. It is part of the employee's responsibilities to protect the LNC's business and the attorneys that it services. All LNC firms should have a written policy regarding the employee's appropriate handling of confidential information and the consequences of breaching such a policy.

Stealing

Stealing should not be a problem in a small LNC firm in which everyone knows everyone, but occasionally with a new employee it may become an issue. It is better to have a written policy that clearly states stealing is grounds for immediate termination than to have to defend one's firm in a lawsuit.

Lying

Lying should be grounds for termination, but it is often difficult to pick up on a job application, during an initial interview, or in the beginning months of employment. The results of lying should be clearly identified from the start. It should be noted on the job application, in the terms of employment

contract, in the employee's manual, or in the firm's policies. Henry Strada (2004), an associate attorney who specialized in small business legal matters and employment law prior to becoming special project editor for First-door.com, addressed this issue in his article, "When Potential Employees Lie — How to Spot a Lie on a Resume or Application." Two steps should be used to evaluate applicants: interviewing and checking references. Although everyone likes to believe that all candidates are honest, a few are not.

If the LNC is concerned that an applicant did not earn the degrees claimed during the interview, there are ways to find out. "One of the easiest ways is to ask probing questions," says Mike Sweeny, managing director of the Project Staffing Service at T. Williams Consulting (Strada 2004). In order to verify whether someone actually attended a particular school, Sweeny suggests that the interviewer "ask questions that only someone who went to the school would know," such as the name of the main administrative building or perhaps the name of one of the famous dorms where all the basketball players stayed. Strada suggests that "if you're unsure a candidate actually possesses the skills and credentials reflected in [his] resume, ask him questions relating to those skills. If the job requires technical knowledge, such as accounting or computer skills, be sure to ask the candidate technical questions." Strada further says, "Of course, if a candidate lies on a resume…he can lie during an interview, too. That's why it's a good idea to have more than one person interview a candidate."

Always compare notes checking for inconsistencies. Lying is certainly grounds for not hiring an individual or for immediate termination if discovered after hire. Other grounds for termination include

- Sexual harassment
- Incompetence
- Excessive absenteeism
- Coming to work inebriated
- Taking drugs on the job
- Inappropriate displays of sexual behavior on the job
- Verbal or physical abuse
- Threats of work place violence
- Illegal possession of firearms
- A failure to perform the job

The Need for Employee Orientation

It is extremely important to allow an adequate amount of time for the new employee to feel welcomed and comfortable in the performance of his duties.

An effective way is to provide for an orientation period to the firm, the owner, and other staff. The orientation should allow for time with an experienced staff member who explains the new employee's duties, shows the new employee how to perform these duties, and provides time for him to demonstrate his ability to perform the required tasks.

The workplace environment should be open and conducive to learning in a nonthreatening way. The new employee should be encouraged to ask questions and seek guidance if he is unsure of his duties. By planning and allowing for a good orientation program, the new employee's transition into the firm's office should be smooth and beneficial for both. Although it is often tempting to pile on new responsibilities, it can overwhelm a new employee. Systems that are clear-cut and understandable to the owner can remain bewildering to a new person.

Employee Development

Part of keeping knowledgeable and skilled employees is to provide an employee development program that is of interest and benefit to the LNC employer and the employee. Challenge the employees to grow through professional development. Some suggestions for professional development are:

- Developing and nurturing public speaking skills.
- Making staff presentations or book reports on business development subjects such as communication skills; problem solving; brainstorming; conflict management; or new computer software programs related to the medical legal field or new computer equipment.

The subjects are endless and so are the benefits to the employees. To maximize communication and promote problem solving, hold regular staff meetings. Encourage questions, identification of systems issues, and establishment of goals for completion of projects.

Best Practices of Working with Employees

The thought of dealing with employees as an LNC employer can be a frightening one. Whether the person is the LNC's first employee or the twentieth, being able to work with employees in such close quarters can be a challenging, but rewarding, experience. Consider the following suggestions.

Be Prepared to Set the Best Stage

Set the best possible working environment for all employees free from distraction yet stimulating enough to produce quality productive work in a timely manner. Dr. Robert Sullivan in his article, "Working with Employees" (2004b), suggests the following list for consideration:

- Be willing to pay for the best. Remember, you get exactly what you pay for…no more and no less.
- Everyone has his own way of doing things. We all seem to forget this and insist it be done "our way." A better approach is to give instructions as to what is needed and allow the individual to provide the method.
- Remember always to criticize in private and to praise in public.
- Remember that *everyone* needs to feel appreciated. Talk to the employees and make certain they know they are providing a valuable service.
- Stay visible. Make certain all employees see the owner at least once a day. The employees need to know the owner is involved and interested.
- Keep promises. If you say you are going to do something, do it! There are no good excuses in the eyes of your employees.
- Ask employees for suggestions on a regular basis. Do this personally…not just with a suggestion box.
- Allow employees to fail! It is well documented that successes are generally preceded by one or more failures. The employee who is afraid to fail will be less likely to be innovative. It is up to the owner to see that none of these failures is fatal to the business.
- Every employee must know exactly what his or her responsibilities are and what authority he or she has for carrying out these responsibilities. This usually is accomplished by very precisely written job descriptions and training.
- Manage by objectives. Each employee should be assigned (by mutual agreement) specific goals to be obtained within a certain period of time. These goals must be measurable, and they will be periodically reviewed so that corrective action, if needed, may be taken to get back on track. Managing by objectives stresses real results as opposed to a job description, which only lists the individual's responsibilities.
- Constantly motivate employees to do a good job. Talk to them about their jobs and their importance to the business. Maintain an employee of the month program with an appropriate certificate and a traveling trophy. Make the monthly presentation with fanfare.

- Implement an effective training program to encourage promotion. Any employee who thinks he is in a dead-end job will not perform up to expectations.
- Remember the "Peter Principle"; to paraphrase: everyone rises to his or her level of incompetence. See that this does not happen in the organization.

Be Prepared to Pay

As Dr. Sullivan suggested, "be willing to pay the best." At an early stage in the LNC's business, it may seem impossible to pay the best. Holding to this ideal will help accomplish equitable pay. Paying the best is not always in the form of hourly wages, but can include financial incentive programs and end of the year bonuses. Be sure that employees know the cost of their benefits and how they add to their total hourly compensation.

Relinquish the Need to Micromanage

It is difficult for nurses to learn to delegate clinical responsibilities in order to have everything done within the shift. Some nurses are able to delegate but others are never able to delegate clinical responsibilities. These nurses believe that the task would not be completed correctly by others. It is an error to think that it is more time consuming to teach another than actually to do the task oneself. In business and in the field of legal nurse consulting, it is important to learn to delegate responsibilities early and in so delegating, not to micromanage. This is no longer a life or death situation. No one is going to die.

Of course, true emergencies in an LNC practice crop up unexpectedly from time to time. For example, a statute of limitations may be running on a case or new cases come in with review deadlines piling up and no way to accomplish everything on time. These can be true emergencies, but can be managed with employees. Make the decision early to utilize employees to help meet the deadlines. Then immediately delegate the duty to allow adequate time for the employee to process, organize, and complete the requested duty. Give the employee specific instructions as to what needs to be done and the time frame within which it needs to be accomplished. Then, allow the employee to decide how and when to do it. Check back from time to time to see whether the requested duty is on schedule. Be courteous, professional, and encouraging.

Working with employees is as much a challenge as it is a highly developed people skill based on mutual trust, integrity, and respect. It can be a wonderful experience.

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The Americans with Disabilities Act (ADA) homepage: http://www.usdoj.gov/crt/ada/adahom1.html.

The U.S. Equal Employment Opportunity Commission homepage: http://www.eeoc.gov/.

State Labor Offices Website www.dol.gov/esa/contacts/state_of.htm.

Billing and Collections

7

PATTIE PATTERSON

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Introduction

Billing and collections keep the LNC in business. For many, this is the hardest part of the business of legal nurse consulting. The LNC must learn to be a business person for the business to succeed.

Establishing Fees for Services

When the LNC first begins a business, it is necessary to establish fees for services that will cover all of business and other overhead expenses as well

as afford a reasonable income. The expenses involved in running a business include, but may not be limited to, accounting and legal assistance; an office with all associated supplies; marketing and entertainment; taxes and insurance; and costs associated with staying current in the medical field. Approximately one third of each dollar should be retained as income. Two thirds of the dollar is used for overhead. Some of these business expenses will apply to all independent LNCs, whereas others may or may not apply, depending on where the LNC chooses to set up practice, whether staff will be hired, and whether someone else is to be hired to do the billing, bookkeeping, and so on.

To figure a base cost or fee schedule, tabulate all of the expenses over a year, divide them by a 40-hour week over 52 weeks, and then add one half as much; this yields the average hourly fee. Even though the figures are based on full-time employment, all hours may not be billable because management and marketing hours will fill some of a 40-hour week. Schaefer (1998) suggests that the business owner should decide on a projected annual income by finding out the average annual salaries in the chosen profession. Divide that figure by 50 and then by 40 to get the hourly rate. Do the same with annual expenses and add the two figures. If nonbillable hours will be one fourth of the total time, add one fourth of the total to the total.

For example, if the average salary is $25 per hour and the expenses total $35 per hour, the total would be $60 per hour. If one fourth to one third of a 40-hour week is spent on activities that are not billable, add $15 to $20 to the $60 to get a rate of $75 to $80 per hour, respectively. Because legal nurse consulting is a rather new field, it may be prudent to look at national averages of nursing salaries in the clinical setting to determine the base amount. Be advised that, if this method is used, expenses will still need to be added to get the final hourly fee.

Be careful when setting fees. Overcharging may afford the LNC little or no business and setting fees too low may not provide enough income to stay in business for very long. Also, setting fees too low may be perceived as undercutting the competition and may alienate other LNCs. If the fees are too low, even if work is available, the LNC will not be able to stay in business for very long. Also, if fees are initially set too low, it may be difficult to raise rates to the fair market value. Increasing fees will be discussed a little later in the chapter.

Some of the basic services that may be provided are

- Reviewing the medical records for strengths and weaknesses
- Writing chronologies and reports or giving a verbal report
- Procuring expert witnesses
- Researching medical issues in the case
- Organizing and paginating the medical records

- Preparing deposition and testimony questions
- Attending defense medical exams
- Serving as an expert fact witness
- Serving as an expert witness

Once the LNC has established the services to offer, the next step is to decide whether all services should be charged the same rate or different rates, depending on the skill level needed to perform the service. For instance, some LNCs charge less for "clerical" work, such as making copies or organizing and paginating, but others charge the same fee for all services. Still others charge more for being an expert witness or expert fact witness because they feel that this service is more stressful and thus should afford a higher cost; others charge the same for all services, including serving as an expert fact witness or expert witness.

Some LNCs charge a lump sum for up to a certain amount of hours or just a lump sum for certain services. For instance, some LNCs may charge $500 for the first 6 hours or any part thereof, and anything over the 6 hours is charged at an hourly rate. Others may say that they will find an expert for $600 as opposed to charging an hourly rate. (Be advised that these figures are just examples and do not reflect any specific LNC fees.) Charging a flat fee for finding an expert can actually be a good way to bill because it gives the client a consistent price for this service. This makes billing for procuring an expert easier because it is conceivable that the LNC may spend several hours locating an expert, but may need the same expert for another client and thus spend significantly less time contacting the same expert for the second client.

Retainers

Whether a retainer will be required needs to be decided at the onset. Also, the amount of the retainer must be determined before a case is accepted. Typically, the amount of the retainer will reflect the amount or type of work to be performed. A good rule of thumb here is to have the retainer reflect a certain amount of hours, usually between 5 and 10 hours. The retainer amount can always be adjusted as needed.

The LNC must also decide whether the retainer will only be paid on the first case from a new client or with every case from the client. Another way to bill — especially with clients that are slow to pay or have a known history of not paying in a timely manner — is to work from retainer to retainer. With this type of fee schedule, the LNC works as many hours as the retainer covers and then waits to do more until the next retainer is received.

Fee schedule	
Charge description	**Fee**
Clinical evaluation; research; review of patient/client-related materials; record chronology/case history; preparation for testimony/deposition; telephone time; and life care plan/report preparation	$_____/hour
Expert witness services	$_____/hour
Travel time (portal to portal)	$_____/hour
Deposition (for trial or *de benne esse*) and courtroom testimony	$_____/hour
Expert witness retainer (minimum fee)	$_____/hour
Service retainer, not expert witness (minimum fee)	$_____/hour
Mileage expenses related to personal travel by car to courtroom, deposition site, or evaluation location	$_____/hour

Figure 7.1 Sample Fee Schedule

One way to establish this type of retainer fee is to find out how many inches of records are involved in the project and then figure accordingly. For 12 inches of records, calculate the retainer as 12 times the hourly fee. Using this formula does not mean that an inch of records takes an hour to perform the work. Rather, it means that, on the average, it will take a minimum of an hour per inch to accomplish the work. If the client only wants a quick reading and verbal report, this same formula can be used; however, instead of multiplying the inches of records by the hourly fee, use half of the hourly fee. If the LNC decides to figure the retainer this way, the contract will need to reflect this.

Alternatively, opt for a general fee schedule followed by a letter of intent. This type of retainer schedule should cover at least the bulk of the initial work. If this is the option chosen, be sure the client understands this from the beginning and be consistent in what is spelled out in the contract. No matter how an LNC decides to charge, it is necessary to establish a clear and succinct fee schedule (Figure 7.1).

Some consultants negotiate long-term retainer fees — that is, they set up a monthly retainer fee. If clients commit to a certain amount of hours per month, they get a percentage off the base rate. For example, if they sign a contract for 30 hours a month for 3 months, they get 5% per hour off those 30 hours. If they sign a contract for 30 hours a month for 6 months, the rate is decreased by 10% per hour. For a year, they get 20% off per hour for the 30 hours. Anything over the 30 hours is billed at the regular rate. The LNC who is marketing to firms that do a lot of medically related litigation may find this to be an effective way to get a long-term contract for steady work. This may also be a stimulus to get clients who pay slowly to pay in advance. Figure 7.2 is an example of a retainer agreement based on this model.

Retainer Fee Agreement

I, <Company Name>, acting as an independent agent, do agree to provide to the attorney-client any and all services needed by said client as long as those services requested are within my competency to perform.

The requested services will be performed in the most expedient and cost-effective means available without compromising the integrity of the work done. The information provided to the lawyer-client will be honest, forthright and nonbiased.

I agree to work a minimum of _____ hours per month at the reduced rate of ____ per hour or a minimum total of _____, which is a nonrefundable retainer. In the event that the month's hours exceed the minimum, the balance will be billed at the end of the month at the normal rate.

I further agree to keep a record of hours with a description of work performed during these hours, i.e., which cases or reports are related to the hours. These will be turned in at the end of each month.

Should work needs subside during the contract period, the firm agrees to pay the contracted agent the agreed upon ____ hours per month, to maintain the contract with the contractor.

Work to Be Performed

Screen any and all potential clients for the attorney.
Organize, paginate, and prepare a report on the pertinent issues found in the chart.
Identify missing or incomplete records needed for complete evaluation.
Research pertinent data within the medical records as needed.
Identify authoritative texts and articles pertinent to the case.
Attend additional client interviews as needed.
Identify, locate, and secure qualified experts for the case.
Assist in formulating questions for the depositions and trial as needed.
Attend depositions as needed.
Assist with interrogatories and discoveries as needed.
Secure visuals and medical illustrations for trial as needed.
Attend trials as needed.
Any other work required by the firm, so long as it is within the contractor's scope of practice.
Any and all changes to this contract must be approved by both parties before it is implemented.
The contract shall run from _____, 200_ through _____, 200_.
The attorney-client agrees with all of the conditions of this Service Contract and freely enters into this contract with the LNC on this_____day of_____, _____.

_____
Lawyer-client

_____
Nancy Smith, RN

Figure 7.2 Sample Retainer Fee Agreement

The LNC must define when the payment is due and, if it is late, what percent to charge for a late fee. This needs to be spelled out in the contract; depending on the client, the LNC might need to adjust the time frame because the defense firms are often paid through insurance companies. Defense firms' payments may take as long as 60 days to reach the LNC, especially those for a large amount. Most LNCs give a 30-day due date from

the date of invoice and from 1 to 5% late fee per month; however, this is completely the LNC's decision.

Working on a contingency basis fee involves performing the work and being paid based on the outcome of the case. It is unethical for the LNC to work on a contingency basis. Although the client may, and often does, work on contingency, he is hired to work in the best interest of his client. The LNC, however, is hired for an unbiased opinion of the case, whether serving as an expert witness or assessing the weaknesses and strengths of the case. Accepting a contingency fee makes the LNC appear biased. This mere hint of impropriety is something to avoid at all costs. Sometimes the client will pay the LNC a bonus after the case settles. This is fine to accept, as long as it was not part of the contracted fee or was not part of a prearranged agreement between the LNC and the client.

The LNC's rates should be consistent for all clients. One client should not be charged less than another client is. This includes giving a special rate or deal to clients. If a special rate is offered to one client, it should be offered to all clients. The bulk of most LNCs' clients are attorneys and, even if some are plaintiff and others are defense attorneys, they share information. It is conceivable that fees paid to independent support staff could be discussed. Also, if a client gives the LNC's name to someone for referral, it is also conceivable that the client may mention the fee schedule. This could cause some problems with establishing fees for the new or potentially new client. If a client wants a special rate for a large volume of work, the LNC should explain that the fees are reasonable for the work performed.

Knowing when to increase rates and by how much can be a very frustrating issue. In order to stay ahead of inflation, it is important to increase rates, but do not wait until overhead is greater than income and it is necessary to make a substantial increase in order to stay in business. According to Brodsky (2000), the LNC is making a mistake not to raise prices on a regular basis. Most entrepreneurs recommend an annual increase; however, at a minimum, rates should be increased at least every other year. This will avoid the necessity of making a big increase 5 or 10 years down the line, when overhead becomes more than earnings and the increase is needed to stay in business. A modest increase, around 10%, is recommended. The increase should be based on the LNC's needs, not on any arbitrary figures or what the competition is charging.

Once the decision is made to increase fees, the next step is to inform the clients. They will want to know three things: the new rate; the effective date; and the reason for the increase. It is also recommended to inform clients in person or by phone so that any questions can be answered from the onset. Explain to clients that this increase is due to the cost of living or cost of doing business. Be sure to give clients at least a 30-day notice.

The Fee Agreement or Contract

Once the fees have been established, the next step is to prepare the fee agreement or contract. Some LNCs have a general contract and others have a list of fees for services with the letter of agreement specifying all of the contractual issues that must be addressed. These contractual issues are:

- Services to be performed
- Fee for services, including not only the hourly rate but also the amount of retainer
- Terms of service to include:
  - A defined billing cycle
  - A percent of the amount charged as a late fee to an unpaid balance
  - Expenses that will be billed
  - LNC's right to withhold services until the total due is brought to current status if the client defaults on payment
  - If the client falls into default, LNC's right to require an additional retainer to cover work still to be performed
- Client's responsibility for reasonable costs of hiring a collection agency or attorney to collect monies owed

Because clients are not always reliable about signing and returning the contract, it is critical to put some sort of stipulation in the contract that makes the contract binding even without a signature in case of a dispute over an invoice or payment not received in a timely fashion. In their article in *Network News* (2003), Mindy Cohen and Pat Iyer suggested language for a letter to the client: "Should you not return a signed letter of agreement within seven (7) days, I will conclude that you are in agreement with the terms of this letter. Furthermore, receipt of records and/or retainer will also constitute your agreement to the terms stated above." Figure 7.3 and Figure 7.4 are sample fee agreements.

Invoicing

Once the fee schedule has been established, the next step is to invoice or write bills. The first issue to address is whether to use software specifically designed for invoicing. The LNC can purchase several good software programs for use in invoicing. Templates can also be downloaded for different word-processing programs to use for invoices, most of which show the same basic layout (see Figure 7.5). The LNC may receive recommendations from an accountant. However, if the LNC plans to prepare the taxes (*not* recommended unless tax

LNC, Inc.
Professional Services and Fee Schedule Agreement

Provision of Documents:

The retaining attorney is expected to furnish all relevant documents and materials as they are obtained and to provide all requested documents and materials as discovery rules permit.

Charges:

All time that is billed on an hourly basis is invoiced in quarter hour increments. This time is rounded up to the next quarter hour. The expert cannot predict or guarantee total fees. Billing will depend on the amount of time spent on the case and other expenses.

Fees:

- Review of cases and/or literature search by our physician/dentist consultant will be charged at the rate of **$xxx/hr**.
- Consulting services are charged at the rate of **$xxx/hour**. This rate does NOT apply to the provision of expert witness services.
- Payment of the **$xxx** Finders Fee for the location of an expert witness is due before ***LNC, Inc.*** begins the search for an expert witness. Payment is **not** contingent upon the attorney's decision whether or not to use an expert supplied by ***LNC, Inc.*** The attorney is welcome to use the experts in future cases without incurring additional financial obligation to ***LNC, Inc.***
- Payment for review of a case for merit is not contingent on the findings of ***LNC, Inc.*** Our physician consultant does not act as an expert witness. ***LNC, Inc.*** makes no guarantees that an expert witness will agree with the opinions expressed by ***LNC, Inc.*** personnel or consultants.
- Obtaining medical records will be charged at **$xxx/hr.**

Hourly fees are subject to change. Charges are based upon the prevailing fee schedule when the work is performed.

In House Creation of Demonstrative Evidence:

Full payment for the creation of demonstrative evidence must be received prior to shipping the product. It is our policy to carefully proofread every work product we produce before it is given to the attorney. If any errors that we made slip through, we will correct these at no charge on the draft version of the product. If the attorney desires changes that are beyond the scope of the plan after reviewing the product, ***LNC, Inc.*** will provide one hour of changes at no charge. Additional changes beyond the scope of the original plan will be charged at the rate of $xxx/hour. ***LNC, Inc.*** will provide the attorney with samples of symbols to review before actual data entry occurs so that we can minimize and hopefully avoid any changes once the calendar is completed.

Retainers:

A $xxxx refundable retainer fee and a signed fee schedule and/or a retaining letter are required before we commence work on a new matter. Billing will be charged against the retainer. LNC, Inc. requires a second retainer of $xxxx from its clients for any anticipated or requested work beyond the work covered by the initial $xxxx retainer fee. Once the second retainer has been fully used up, we will ask for a third retainer, etc. until the litigation has been resolved and all work is completed. LNC, Inc. reserves the right to modify the amount of the retainer or withhold submission of a report pending receipt of a requested retainer. **Please make check payable to *LNC, Inc. and* forward directly to our office.** Our tax identification number is xx-xxxx.

The publication, listing, or designations of LNC Inc's expert without our permission and formal retention is prohibited. Any violation will be considered retention and will result in invoicing for a $xxxx **nonrefundable** fee.

Invoices:

Invoices will be sent periodically to clients, and are due immediately upon receipt. Failure to make payment of invoices shall constitute a default of our agreement. Any questions pertaining to the billing must be put in writing and postmarked no more than ten business days after the date of such billing, after which time the billing will be considered correct and payable as billed. Outstanding balances over 30 days are subject to an interest charge of 1.5% per month each month until paid. The expert, without liability, may withhold delivery of reports, and may suspend performance of his/her obligation to a client pending full payment of all charges. Failure to include a billable item in an invoice shall not constitute a waiver of the right to add the charge to a subsequent billing.

Responsibility for Payment:

Billing is **not** contingent upon the findings and/or conclusions reached. Responsibility for payment is that of the client (law firm/insurance company) engaging the expert's services and is not contingent upon client's contractual agreement(s) with plaintiff/defendant third parties and/or case status. Law firm is responsible for the payment of all fees. If a third party, such as an insurance carrier, is designated to pay fees directly to LNC, the third party shall be identified by name, address, and telephone.

Name:

_____

Address:

_____ **Phone:**

_____

Collections:

In the event that it becomes necessary for LNC, Inc. to retain an attorney or collection agency for collecting outstanding fees or any other breach of this agreement, the client agrees to pay LNC, Inc`s. reasonable attorney fees and costs incurred in enforcing its rights under this agreement. A 30% surcharge will be added to the outstanding balance if a collection agency becomes involved in the collections process.

SIGNATURE:_____

Enforcement:

It is specifically agreed by and between the parties that this contract is deemed signed and entered in City, xxxxx County, State. Any action to enforce or interpret the terms of this agreement shall, by specific agreement of the parties, be within the jurisdiction of City, xxxxx County, State.

Severability:

If any provision of this agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Termination:

LNC Inc. reserves the right to terminate this agreement in the event of non-payment of our fees and expenses, or other causes. All outstanding fees shall be paid at termination.

Expenses: Including, but not limited to:

Travel: Automobile expenses are billed at $0.xxx per mile plus tolls and parking charges. Airfare, train fare, lodging, etc. are to be paid in full seven days in advance. Meals are billed as incurred, when time away from office exceeds four hours.
Photocopying of medical records, materials, or literature is $0.20 per page.
Delivery charges and supplies: As incurred.
Research Expenses: Including on-line search fees, retrieval of articles, as incurred.

Modifications to the Agreement:

All modifications must be agreed to and confirmed in writing. I have read the fee agreement and I understand and agree to the terms contained therein. I understand that that work on the case will not begin until LNC Inc. has received a signed copy of this fee agreement and the retainer.

Signed:

_____

Attorney or firm representative as individual and on behalf of firm (signatory shall have the power to bind the law firm with regard to this agreement)
Firm:_____
Case name: _____ **Date:**_____

Figure 7.3 Sample Professional Services and Fee Schedule Agreement

laws are truly understood), then one of the programs that can interface with a tax program may be an option. This will make tax preparation much easier, even for quarterly estimated tax preparation.

Once the LNC decides upon the type of program or invoice, it is next necessary to decide how to keep track of the time. This can be done in several ways. Timing types of clocks can be purchased for a nominal fee. These clocks work similarly to a stopwatch used by coaches to time runners, except that they can record hours rather than seconds and minutes. Some word-processing programs also have the capacity to time how long the program is opened. This works well as long as the LNC does not leave the document open while not working with it. The LNC can also download a free program called Tiny Timer. This program, once downloaded, sits unobtrusively in the toolbar, until the LNC engages its services. Then it will "count" the time until it is turned off.

One other way to keep the time is by simply writing the time down when starting, writing the time down whenever stopping the work product, and then figuring the total time spent. Regardless of the way in which the LNC chooses to keep the time, it should be kept accurately and concisely. It is also a good idea to keep, for personal records, the actual breakdown of how the hours were spent. Some clients even request a detailed breakdown of what time was spent on what areas. However, regardless of whether they request this, if the LNC keeps this breakdown as part of personal records, it may come in handy if a dispute arises over the billable hours or the bill as a whole. This will be discussed in more detail under the "Min-

I, Nancy Smith, RN, LNC, acting as an agent for <Company Name>, do agree to provide to the attorney-client any and all services needed by said client as long as those services requested are within my competency to perform. The lawyer-client by virtue of the signing of this contract will secure my services and the payment of the retainer for services as established by this contract.

The requested services will be performed in the most expedient and cost-effective means available without compromising the integrity of the work done. The information provided to the lawyer-client will be honest, forthright, and nonbiased.

Services to Be Performed

Research, review of charts, and depositions.

Identify missing or incomplete records needed for complete evaluation.

Organize, paginate, and prepare a report on the pertinent issues found in the chart.

Identify, locate, and secure qualified experts for the case.

Assist in formulating questions for the depositions.

Attend IME/FCEs and review doctor's report for discrepancies and serve as a fact witness for trial, if needed.

Secure visuals and medical illustrations for trial as needed.

Trial preparation, travel, court testimony.

Fee Schedule

A $XXX retainer to secure services, which will be applied towards any and all services rendered.

Base rate is $XX/hour for services pertaining to chart review, research, recommendations, and securing expert testimony. (Securing experts will be a (3) three hour minimum charge.) Also, any phone calls relating to the case will also be billed at the same base rate.

$XXX/hour plus expenses* for work outside the (My City) area (for attending IME/FCEs outside of the [My City] area) (out of town: greater than 100 miles from [My City]).

Incidental time, i.e., setting up chart, printing time, etc., will be billed at the regular rate.

"Last minute" cases will only be accepted if (My Company Name) feels we can make adequate time to prepare for the case, without compromising the integrity or quality of the work we are to perform. An additional fee of $XX/hour will be incurred for these last minute cases. (Last minute is less that (2) two weeks.)

The client will be billed monthly and the bill will be payable 30 days from the date of the invoice. An interest charge of 1.5% per month will be charged to any balance outstanding after 30 days from invoice date.

*Expenses: actual expenses reasonably and necessarily incurred including travel, food, lodging, long distance phone charges, photocopy charges at $.10/page, binders, dividers and any other costs as required (trial exhibits, etc.).

The lawyer-client agrees with all of the conditions of this Service Contract and freely enters into this contract with the LNC on this_____ day of_____, _____. My receipt of the medical records and/or retainer fee is acceptance of this contract.

_____

Lawyer-client

_____

Nancy Smith, RN
LNC

Disclaimer: prices subject to change without notice. Cost is based on prevailing rate.

Figure 7.4 Sample Contract

(Business name)
INVOICE

Address
SS # or EIN #

DATE INVOICE #
8/5/04230

Bill To:

TERMS

Description	Quantity	Rate	Amount
Review of medical records for injured person with chronology and report	X hours	$XX.XX	$XXX.XX
		Total	$XXX.XX

THANK YOU FOR YOUR BUSINESS!

Figure 7.5 Sample Invoice

imizing Disputes over Billing" section. Figure 7.6 provides a sample invoice specifying activities performed for a case.

Clearly, billable activities include time spent reviewing the records, writing the report and chronology, and so on. Billing for research, however, can pose problems. As long as the research stays on course there is no problem, but often the research can carry the LNC to areas not even remotely related to the topic being researched. If this is an issue, be sure not to charge the client for these irrelevant explorations unless they lead to other sites relevant to the research topic.

Another area often in question is how to handle phone conferences or phone meetings. Many LNCs are unsure of how to bill for these items. This actual time can be billed in several ways. One way is to calculate the time in 6-minute increments. Anything over 3 minutes is added; anything less than 6 minutes is not added. Many law firms, which will be the bulk of most LNCs' clientele, use this calculation. Some LNCs calculate the time in 10-minute increments, with anything over 5 minutes added as an increment and less than 5 minutes not added. A third way to calculate is in 15-minute

Date	Hours spent	Task
Hours for injured patient		
December 18, 2003	7	Reviewing records
December 22, 2003	12	Began chronology
December 24, 2003	6	Continued on chronology
December 27, 2003	4.5	Finished chronology
	4	Wrote report
January 17, 2004	1	Update from new records
March 7, 2004	3	Update from new records
Total hours spent thus far	37.5	
May 31, 2004	3	Update of new records
Hours for life care plan		
May 14, 2004	4	Determining what needs to be in the life care plan and setting it up.
May 17–May 30, 2004	10.2 5	Spoke with client and determined her needs and implemented them. Also implemented suggestions from functional capacity exam.
June 12–14, 2004	14	Costing items in LCP.
	3	Eight calls to doctor's office to get his approval on my recommendations; also calls returned.
Total hours spent	31.2 5	
Total hours spent on both	68.75 @ $XX.XX/hr = $XXXX.XX	

Figure 7.6 Sample of Breakdown of Hours

increments, with 8 or more minutes giving the whole quarter and 7 or less losing the quarter hour.

One way to simplify calculation is to establish minimum time units. For example, using a 15-minute billing system, any activity that lasts 15 minutes or a portion thereof is billed as 15 minutes. No matter how the LNC decides to figure it, billing must be consistent with each client as well as with the timing of all billable activities. One suggestion that might be considered for timing calls is that a lot of the newer phones automatically time each call. This should at least be considered if a new phone is needed for the office because it will keep a more accurate record of the calls.

Some LNCs do not bill for the actual cost of the long-distance call because the cost of long distance is so low. Billing for long-distance calls

might look questionable to the client, makes the LNC less than professional, and can stimulate the client to wonder about other aspects of the LNC's business practices. Also, those costs are considered reasonable business expenses and can be deducted from income taxes.

Another area sometimes considered questionable is billing for the mileage. One way to approach this is to establish what is considered out of town and to bill for actual mileage. For example, the LNC may want to denote in the contract that anything over a certain radius is considered out of the area; thus, mileage will also be billed, along with the actual travel time. When billing for the actual travel time, realize that this is billable time, so use the normal hourly rate. Were it not for driving, work on other billable projects could be done. Some LNCs do not bill for the allowable amount set by the IRS so that part of the mileage can still be used for a tax deduction. Whether the mileage is charged to the client or not, for tax purposes, the LNC should keep a running tab of all mileage (see Figure 7.7). Some LNCs have practices that involve flights. If billable work is done on a case other than the one for which the travel took place, the LNC should not bill the flight time.

Photocopying fees may also seem unreasonable to the client. If the LNC is asked to photocopy several hundred pages, a fee may be reasonable to charge, along with the time spent doing the copying. However, if only a nominal amount of copying is required, just use the fee for reasonable business expenses. Other expenses that can fall under questionable expenses are paid parking, tolls, and postage for mailing reports that need to be mailed. Unless the costs are substantial, the LNC should save the receipt to count as a business expense on taxes.

LNCs may wonder if they should give a discount for timely payment of the invoice. The clients who pay when the invoice is due are getting a discount; they are not being charged a late penalty fee. Giving a discount can cause major bookkeeping headaches; also, clients who know that the discount is a possibility will take it even though the payment is late. Why should someone be rewarded for doing what he is supposed to do in the first place? The phone company or the electric company does not give a discount when bills are paid on time. The LNC is running a business just as the phone and electric companies are.

After the fee schedules and billable issues have been addressed, the final step in invoicing is to establish when to generate invoices. Some clients may have scheduled times for paying invoices; others may have no practice for this task, paying once it has gone through the authorization process. It is a good idea to know clients' policies on how they pay, and even their authorization process because this should give a better idea of when to expect payments. It is also a good practice to establish policies on invoicing.

Expense Report

Date	Destination	Beginning mileage	Ending mileage	Total miles	Miscellaneous costs for trip

Figure 7.7 Sample Expense Report

The experts suggest not waiting until a specific time of the month, but rather to invoice at least after each milestone of the project and as soon as it is completed. If the project is quite large and spans several months, it would be prudent to invoice at least monthly. This will give the LNC some ongoing income once the retainer has been exhausted and keep the client updated on how many hours are being spent on the project to help eliminate what is commonly referred to as *sticker shock*. Sticker shock happens when several months' worth of work totaling thousands of dollars is billed at one time without incrementally informing the client about the amount of time being spent on the work.

Minimizing Disputes over Billing

The LNC can do several things to minimize the possibility of disputes over billing. Make sure the contract of fees spells out the charges in detail and what is covered under each charge. Once the fee schedule has been discussed with the client and the work has been identified, generate a letter to the client, spelling out, in detail, what will be provided and the costs associated with these services. If the client sets a limit not to exceed a certain amount of time or charges, as long as it is reasonable, spell this out in the letter as well. Also, be sure to establish when the client wants a progress report, especially if a lot of records are involved; spell that out in the letter. Once the LNC has defined all of the issues related to what the client wants, it is hoped that no surprises will occur. This will minimize the chances of billing disputes.

Communication is the key to reducing the risk of a billing dispute. As the LNC progresses with the work, the client should be kept informed of progress. Also, if the LNC has agreed to stay within a certain time frame or a certain cost and finds that it will be significantly more than initially expected, the client needs to know this as soon as possible. One reason to inform the client in a timely manner is that the client may rethink the time frame or dollar amount if informed early. Another reason is that if the client refuses to compromise, the LNC has the option to accept the terms as agreed upon or not to do the case.

Although not working the case may cause loss of a client, continuing to work it, even if the final payment will not reflect the actual work put into the work product, may lend credibility to the LNC's integrity and thus may earn more work. Also, it will be a lesson learned for the LNC. The next time that this request is posed, the LNC will hopefully have a viable option like offering to report frequently on progress and trying to keep the time and cost to a certain range. Realize that the ability to bring the work in under or at budget is a great way to impress the client.

Regardless of whether the client establishes a maximum, the LNC should report on the progress of the case, especially if it is a big case with lots of research and/or records. This will help to eliminate or at the least minimize sticker shock. This is especially the case if the medical records are not that voluminous; however, it can happen even with large volumes of records if the client is not apprised of the progress. It is also advisable for the LNC to bill at least monthly to avoid sticker shock. If the case is consuming all or most of the LNC's weekly billing hours, it may be advisable to bill every 2 weeks or even weekly so that the client knows each step of the way exactly how much time is involved in the case. This should, hopefully, assure cash flow.

A new LNC will experience a learning curve that affects billing; this can be handled in a couple of ways. One way is to bill for all hours spent working on the case, but at a lesser fee. The main problem with this option is that, once the LNC becomes competent in this work, the increase to the "normal" fee may seem like too big a jump from the learning curve fee. The second way is to bill at the normal hourly rate, but only bill a percentage of the actual hours spent on the work. The hours deducted represent the learning curve.

Even if the LNC abides by all of these guidelines, this does not guarantee that no disputes about bills will occur with clients. This is why keeping detailed records of time is crucial. The LNC has a documented account of what was billed. If the client questions where hours were spent, the LNC will be able to address the issues and hopefully satisfy the dispute. When confronted by the client with billing concerns, it is important to communicate in a nondefensive manner so that the client will be more open to what is said. An open dialog is always preferable. Even one person becoming defensive stifles open communication because it can cause the other person to become defensive as well. With that in mind, even if the client becomes defensive, the LNC should avoid becoming defensive as well.

The LNC should also keep detailed records of all correspondence, faxes, e-mails, and conversations; in fact, any conversation with the client or a representative of the client should be documented and retained.

The LNC can consider several options if the dispute reaches an impasse. A compromise may be offered, if both parties are willing to entertain this option. A compromise offered by the client should be fair and not take advantage of the LNC. If the compromise is unfair, the LNC should question whether this is a client to keep. It may be preferable to avoid worrying about keeping the client to relieve some anxieties of a repeat performance of disputing the bill.

The LNC may not mind losing this client and thus is not willing to accept the client's compromise, or the client may be unwilling to compromise. When the difference in the amount billed and the amount that the client is willing to pay is significant, the LNC may want to turn the account over to a collection agency. Be advised, however, that the agency keeps a portion of the monies collected. Be sure to address this possibility in the contract so that these costs can be added to the fees owed. If, however, the amount is not significant enough to share with a collection agency or the LNC does not want to bother with one, the the case could be taken to small claims court.

Billing disputes are not that common and they can usually be resolved simply by explaining the concerns of the client. Resorting to contacting a collection agency or filing a suit in small claims court is rarely needed.

Slow Payment

Unfortunately, slow payments happen all too often. Sometimes, late payment occurs for a good reason. The LNC needs to talk with the client to find out why payment is slow, when the payment can be expected, and if a payment plan needs to be implemented.

Some of the reasons the payment might be late include, but are not limited to:

- The invoice has not been given to the client to approve the payment. (It is usually a good idea to send the invoice to the attention of the client specifically, as opposed to the firm or a generic department, so that it will get signed and paid.)
- The client works for a defense firm. (Insurance companies may often take as long as 2 or more months to pay.)
- The client is having some financial troubles. (This might be a client with whom the LNC will work only from retainer to retainer.)
- The attorney must get the money from the client in order to pay the LNC. (In many states, the expert must be paid by the injured party, not the attorney. This regulation was passed in order to have a more level playing field for the smaller firms that may not have the resources to do these cases otherwise.)
- The attorney says that the invoice was never received. (At this point, the LNC may want to fax a copy to the attention of the client, explaining that it needs to be paid as soon as possible and noting when the invoice was actually mailed. Also, check to see whether the mailing address is the problem. Another good idea is to establish a relationship with the person who pays the invoices. Also, get this person's fax number and fax a copy of the invoice each time that it is mailed to the client.)
- The client says that the invoice was signed when it first came in and does not know what happened. (At this juncture, the LNC needs to speak to the billing department. If payment has yet to be mailed, ask that it be sent overnight. The LNC has that right because the payment is now overdue.)

Whatever excuse the client offers, if it is reasonable, try to work with the client as much as possible. The LNC needs to continue to generate monthly invoices, noting the late fees incurred and the original invoice date. This will not only remind the client that the payment is still due, but also give documentation of the reminder.

If, however, the reason is not valid or the client continues not to pay the invoices, the situation will need to be reassessed. At this point, the LNC may first want to recontact the client and explain the situation. Avoid becoming emotional or angry. Be succinct and professional as well as businesslike. Attempt to get a commitment on exactly when payment will be received. Know what timeframe is acceptable before the call is placed. Remember that the client is already past due with the payment, so while being professional in demeanor, the LNC must also stand firm on when the payment is needed. The client is well versed in the art of negotiation and can easily convince the LNC to wait longer than is acceptable. Do not allow this to happen.

Options for Nonpayment

If the client does not comply with the stated timeframe, does not offer a reasonable timeframe, or does not speak with the LNC about the situation, the invoice is then in default. As recommended by the American Express Small Business Network, at this point the LNC needs to generate a letter to the client documenting the attempts to collect.

- *Write a friendly reminder.* The first letter should be a friendly letter stating that the due date has passed and asking if there is a problem. Send this along with a copy of the invoice with past due stamped on it and highlighting the date on which it was initially sent.
- *Second friendly reminder.* If no response is received after 10 days to 2 weeks, send another friendly reminder with another copy of the invoice, again reminding the client that the payment is past due.
- *Place a call to the client.* A week to 10 days later, if the client has not responded, call to try to ascertain why payment has not been received because there may be a problem. No matter what the reason is try to get a commitment to pay. If the client says that payment has been mailed, find out when it was mailed and where it was sent so that an arrival date can be estimated.
- *Send a follow-up letter.* After the phone call, send the client a letter confirming the telephone conversation and a reminder of the promise to pay the invoice.
- *Place a follow-up call.* If payment is not received in 10 days to 2 weeks from the date of the last phone call, place another call to the client asking courteously but firmly for full payment immediately. If, for some reason, the client is unable to pay, obtain a commitment to a definite date to expect payment.

- *Send first active collection letter.* If payment is not received 10 days after date of expected payment, send another letter emphasizing the fact that the account is now delinquent. If payment is not received in 7 days, credit privileges will be suspended.
- *Place collection phone call.* If no payment is received after 2 weeks, call the client one last time and stress the seriousness of the situation and that this is the last opportunity to pay before the matter is turned over to a collection agency and possible further legal action taken. Again try to get a commitment to paying the delinquent amount. Also stress the benefits of resolving this issue. Remain calm and polite during the conversation.
- *Send second collection letter.* A week after the last phone call, if no payment has been received, send one final collection letter stating that if payment is not received immediately, the matter will be turned over to a collection agency.
- *Make a decision about whether to send the account to the collection agency.* If payment is still not received by the time the account is 90 days in arrears, it may be time to move on to the next step.

If, at any time during the time of attempting to collect from the client, he offers to pay part of the monies owed, take it because this may be a means of admitting that it is in fact owed. Try to get a commitment for when the balance will be paid or at least when to expect future payments until the amount is paid in full. Make a copy of the check and any future checks before deposit in case the client defaults again or tries to say that he has paid more than he really has. Also, do not cash any checks marked "paid in full" unless the account is actually paid in full.

The next step needs to be thought through very carefully because it will cost time and money. One option is to file a suit against the client. Factors to consider are the amount actually owed by the client and the cost of filing the suit. Costs of filing a suit include the attorney fees; the actual cost of filing the suit; the time involved in the suit; and possible loss of future income from friends and associates of the client as well as the client. If the amount owed is under a certain amount, suit can be filed in small claims court without an attorney; however, it is important to know state regulation on the maximum amount for this option.

Another choice is to turn the defaulted client's case over to a collection agency. This too comes with costs. The collection agency takes a percent of the amount collected as payment for its services. Some collection agencies receive as much as one third or more, so this needs to be considered before embarking on this course. Some LNCs include a statement in the fee agreement that the

client's invoice will be increased by one third if the case is turned over to a collection agency.

If the LNC is and has already been named as the expert in the case and the case is still active, the LNC can also refuse to serve as the expert if the monies are not paid. Although it is rare that an expert is not paid in a timely manner, this does happen. This leverage may work, but the LNC testifying expert needs to be prepared to go through with it if the client still does not pay. The LNC testifying expert must have thorough documentation of all attempts to collect before going that route so that, if the client still refuses to pay, the expert cannot be held liable for the outcome of the case.

If the LNC decides to file a lawsuit, an attorney needs to be consulted and asked to draw up a letter informing the client of the intent to file suit. The letter should also give the client one last chance to pay the monies owed within a specific timeframe, say 7 to 10 business days. This will allow the client to consider the cost of a lawsuit; also, once the suit is filed, it becomes public information. It is hoped the client will not want this information to be made public.

If the client has done this once, chances are he has done it before, so hurting the LNC's reputation is probably a moot point. Keep this in mind when deciding what action to take because it is prudent to look at the worst-case scenario.

If the situation is resolved to the LNC's satisfaction and the client still wants to work with the LNC, this would be a good time to consider using a retainer-to-retainer type of fee. If the client is agreeable, then this may be the route to take in this particular instance. However, if the LNC decides to use this method, it must be used consistently with the particular client, and good documentation must also be kept.

Best Practices for Billing and Collections

In summary, certain critical points bear stressing:

- Decide on a fee schedule based on the expenses of running a business coupled with the fair market value of similar services in the area.
- Document all discussions with the client so that no misunderstanding will occur.
- If a contract is not used, generate a letter of agreement spelling out what is expected of the LNC and the client so that no misunderstanding is possible.

- Ask for and get a retainer before the work is begun.
- *Never* work on a contingency fee basis.
- Bill as the project proceeds, not after finishing a large project. If payment is not received in a timely manner, do not continue working until payment for past work is received.
- If slow payments are a problem, talk to the client. Communication is the key to avoiding most problems.
- If the problems cannot be resolved, think long and hard before deciding on the next step to take.
- If, after collection problems, the client still wants the LNC to work with him, consider using a retainer-to-retainer type of payment if working with this client is an option worth pursuing.
- Always remember that good communication is the key to avoiding most problems — communicate, communicate, communicate!

LNCs are people who want to help others; they are nurturers by nature. Although this is an excellent trait in the clinical setting, for business issues, it is necessary to be a businessperson. LNCs' main clients are attorneys, who are good at convincing others that their point is the right one because that is what they do for a living. Before discussing a position with the client, the LNC must feel confident about it and stick to it. The client must not be allowed to bully or coerce the LNC out of this position. This may be the hardest part of running an LNC business. Nevertheless, this is a business and must be handled as such.

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Ethics and the Legal Nurse Consultant's Business

8

BETTY JOOS

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Introduction

Within the philosophy of ethics are many theories of how to determine what is right or how men "ought to behave." This chapter does not attempt to present a study of these philosophical theories of ethics but rather references personal ethics — sometimes referred to as morals or virtues — as a basis for addressing ethical situations. Socrates, who lived some 400 years before Christ, guided the way of personal ethics when he stated, "An unexamined life is not worth living." He was concerned that Greeks in his day were pursuing lives of pleasure, fame, or riches without thinking about whether these were truly important to their real goals. How would they ever know if

they were doing the right thing if they never raised questions and sought answers to these issues (Gough 1998)? This chapter is directed to help legal nurse consultants apply ethics to their practice and business. It attempts to meet a need for practical applications and guidelines of ethics rather than presenting or espousing any specific philosophical theories.

In addition to developing awareness of one's personal ethics, it is important to comprehend the several professional codes of ethics that affect the legal nurse consultant's practice. The LNC should be fully cognizant of the *Code of Ethics for the Legal Nurse Consultant* (American Association of Legal Nurse Consultants 1992) and the *Model Rules of Professional Conduct* for attorneys as presented through the American Bar Association (2004). Although the ABA rules do not regulate the LNC, they do have an impact on an LNC's professional and business practices. Ethical guidelines also need to be considered, including ethical marketing, competing ethically, and adhering to ethical and moral principles in dealing with clients and colleagues.

Given the many sets of "codified" guidelines about which the LNC must develop knowledge, the personal ethics of the LNC sets the precedent for his or her behavior. If the LNC is not personally ethical, then espousing other ethical guidelines seems a moot point. Following all the rules and codified professional ethics may keep LNCs from stepping "over the lines" of ethical professional situations, but it will not teach "how to become people of good and virtuous character" (Gough 1998, p. 135). That lesson comes from the "examined life" and attempting to develop a continuing awareness and assessment of behaviors and outcomes when dealing with others.

Personal and Professional Ethics

Ethics as Related to Morals

Being moral or ethical is a choice. It is proactive behavior that seeks not only to "do" the right thing but also to "be" a good person. The words *ethics* and *morals* are often used synonymously. The term "ethics" is derived from the Greek word *ethos*, which refers to customs or characteristics. "Morals" is derived from the Latin word *mores*, which is the root term for "morals" and means "customs" (Martin 2001). Individuals are admired for being moral or virtuous because those terms are most often used in describing personal behaviors. Ethics is not only a theoretical issue proffered in professional or business guidelines, but also a way of thinking and applying personal morals in everyday life. Popkin and Stroll (1956, p. 17) state that "Ethics originates in everyday life.... Every man who is reflective and who is troubled by certain situations in his daily life is a philosopher of ethics to that extent." In this

chapter, the term ethics is used to include the meanings of morals and virtues and the behaviors implied by these.

Although everyone will fail at moral excellence at times, it is important to continue to strive toward the higher ethical goal. Applying ethical reasoning is not always as simple as it sounds. Trevino and Brown (2004, p. 69) express that the idea that "it's easy to be ethical" is a myth. They state, "The idea is that moral judgment processes are not initiated unless the decision-maker recognizes the ethical nature of an issue" (p. 70). Ethical judgment may be difficult to apply, particularly when some of the facts may be unclear. It is important to have resources from which to obtain guidance in dealing with ethical issues. These resources include an understanding of professional ethics under which the work is done as well as having ethically informed colleagues who can aid in discerning the facts and help devise a plan of action.

Development of Professional Codes of Ethics

Professional codes of ethics are developed to help those in the profession cope with problems that arise in the conduct of professional life. These codified rules of conduct provide a guide to assist in making decisions related to a specific profession or business. Such codes as medical ethics, legal ethics, and business ethics are examples. Some rules are not intuitive to those outside a profession — for example, lawyers are not permitted to share fees with nonlawyer professionals. The reason for this rule of conduct may not be apparent at first glance, but it is based on thoughtful consideration of potential influence on the attorneys or on the "others" if a fee is shared. Given this consideration, it behooves all involved in any specific profession, even in an indirect way, to be aware of the different ethical rules that may have bearing on their practices.

AALNC Code of Ethics

The American Association of Legal Nurse Consultants (AALNC) developed the *Standard of Practice* for LNCs (Iyer 2003, Appendix 6-2) as well as a code of ethical conduct soon after the organization was formed. Many of these ethical rules imply personal ethics. Note also that the *Standard of Practice* for LNCs outlines behaviors that may be included as part of ethical expectations. For example, the following considerations regarding personal ethics could be inferred when reviewing the AALNC *Code of Ethics*.

- "The legal nurse consultant does not discriminate against any person…and does not let personal attitudes interfere with professional performance." The LNC may work on cases involving plaintiffs or defendants whose behavior or lifestyle are different than the LNC's.

Prejudice or bias should not creep into a report when this ethical guideline is considered. This expectation assuredly is affected by one's personal integrity and ethics.

- "The [LNC] performs as a consultant or expert with the highest degree of integrity." The interpretive discussion states that "integrity is a personal and sacred trust and the standard against which the legal nurse consultant must ultimately test all decisions." This implies that the highest personal ethics is expected in the performance of legal nurse consulting.
- "The [LNC] uses informed judgment, objectivity, and individual competence as criteria when accepting assignments." The LNC must realistically assess his or her capabilities and make sure that services conform to those abilities. This is part of personal ethics as well.
- "The [LNC] maintains standards of personal conduct that reflect honorably upon the profession." One would be hypocritical to talk about ethics and not behave accordingly. Part of this personal conduct standard also is seen in collegiality and the willingness to share knowledge and skills with cohorts as stated in the *Standards of Practice*. This might include offering mentoring and support to other LNCs as one matures in the profession.
- "The [LNC] provides professional services with objectivity." The LNC should avoid bias or allowing personal prejudices to affect work product. Conflicts of interest must be recognized and avoided. Advocacy, except for general concepts of seeking truth and facts, is not a part of this objectivity (D.M. Marino, personal communication).
- "The [LNC] protects client privacy and confidentiality." This code is sacrosanct and is included in almost all professional codes. The LNC does not discuss case details in public forums such as listservs or chapter meetings, or other similar situations.
- "The [LNC] is accountable for responsibilities accepted and actions performed." Clearly stated here is that the LNC must accept and complete responsibilities in the best way in which he or she can possibly perform. There is no shortcut to providing a thorough work product and no excuse for presenting opinions without supporting evidence. Producing poor work product is not excused by claiming lack of writing or other basic skills. A responsible LNC will prepare by improving writing and spelling skills as well as in other requirements for LNC work. The AALNC Standards of Practice (Iyer 2003, Appendix 6-2) note that the LNC should seek performance appraisals, constructive feedback, and ongoing educational opportunities in order to continually improve the practice. This code also supports that the LNC carries through on promises made.

- "The [LNC] maintains professional nursing competence." The interpretive statements under this add that the AALNC requires that the nurse using the designation *LNC* must maintain an active registered nursing license and keep abreast of "the current scope of nursing practice and the standards of the profession. The [LNC] does not practice law." Because the LNC does not practice law, working directly for the public is not an LNC prerogative.

ANA Code of Ethics for Nurses

The *Code of Ethics for Nurses* by the American Nurses Association (2001) is also noted as another "professional organization with which we are aligned…" (AALNC, *Preamble of Code of Ethics and Conduct with Interpretive Discussion*, adopted 1992). Using this ethical code introduces some dilemmas into the LNC's work. Given that the LNC does not have a nurse–patient relationship with the plaintiff patient or defendant physician/nurse, several of the listed codes under the ANA are difficult to interpret into the LNC profession.

Under the ANA *Code of Ethics*, the second code listed states that "the nurse's primary commitment is to the patient…." In the third code, it is noted that "the nurse advocates for…the patient" (ANA 2001). There is no nurse–patient relationship in the work of the LNC. The "patient/client" is the attorney client for whom the LNC works — a plaintiff or defense attorney, an insurance company, or others. Although attorneys are obliged to advocate for their clients, the LNC, in the AALNC *Code of Ethics V*, is charged with providing "professional services with objectivity." Advocacy, defined as pleading the cause of another, is the role of the attorney. Even when the LNC acts as an expert witness, it is appropriate only to work within the bounds of fact, not as a patient advocate (D.M. Marino, personal communication). As stated in an article in the *American Journal of Obstetric and Gynecology* (Fisher et al. 1995), "Ideally, the role of the medical expert should be that of unbiased conveyer of information regarding the standard of care for a particular situation and whether the standard of care was violated" (p. 1793).

Other Professional Codes of Ethics

The *Model Rules of Professional Conduct* (MRPC) proffered by the ABA are of specific significance to the practice of legal nurse consulting. Several issues have an impact on the LNC's practice. The specifics of these are discussed throughout this chapter.

Business ethics is at the forefront of many noted ethical discussions these days. The recent downfall of several large corporations and well-known business people has shown evidence of multiple lapses of ethical business behaviors. Most businesses set out an ethical code that is specific to their business

and defines their company's guidelines for how they treat their customers, investors, and employees. Having such an ethical code obviously does not mean that it will be learned or adopted by the employees. The latest corporate failures have shown clearly that a code of ethics is not simply a written document but must be a living force for ethical behavior modeled as a way of being and doing for that business. Likewise, the LNC who sets up a business must write down the ethical guidelines for the business and also must continually exemplify and model those ethics to clients and colleagues.

Legal vs. Ethical

Some of the recent corporate downfalls were in part due to the use of legal but highly unethical behaviors in accounting practices. Not all behaviors viewed as legal will produce ethically acceptable results. In the fifth edition of *Marketing Management* (Mullins et al. 2005), a distinction is stated regarding the difference between legal actions vs. ethical action: Thus, ethics is more proactive than the law. Ethical standards attempt to anticipate and avoid social problems, whereas most laws and regulations emerge only after the negative consequences of an action become apparent (R. Cook, as cited in Mullins et al., p. 44).

On the surface, it seems easier to distinguish legal vs. illegal issues because legality is defined by statute, although some complex issues require an attorney's opinion about their legality. However, even when a situation appears to be legal, if the outcome could be open to differing interpretations or even outright unacceptable results, the action is best avoided. Only a continuing awareness of potential ethical problems resulting in undesired outcomes can keep this from occurring.

In the instance of the LNC starting a business, some legal issues are as simple as municipal laws regarding a business license. It is appropriate that the LNC should follow the legal requirements to set up a business. Legality is extended to other issues as well. For example, being asked as an expert to "extend" or "exaggerate" an opinion offered in a case is tantamount to being asked to commit perjury, as well as being an ethical issue. When the LNC is concerned regarding a potential ethical issue, one of the first questions to ask is, "Is it legal?" If it is believed to be legal, then considering the possible outcome as well as the ethical aspects will be the major concern for the LNC.

Identifying ethical issues as they arise is usually more complex than determining legality. Recognizing an ethical issue for what it is may be difficult at first glance. It may take time for ethical issues to evolve into a recognizable concern. Trevino and Brown (2004) indicate that a moral awareness or "ethical sensitivity" is required and that this phenomenon of awareness of ethical issues is beginning to be studied. They note that "an individual is more likely to identify an issue as an ethical issue to the extent that a

particular decision or action is expected to produce harmful consequences and to the extent that relevant others in the social context view the issue as ethically problematic" (p. 70).

Recognizing Ethical Issues

In 1996, Frank Navran wrote "Three Quick Tests for Ethical Congruence" for the Ethics Resource Center (www.ethics.org). Navran set out to help identify potential issues that "cast our values in sharp contrast against a particular choice of action" (p. 1). He categorizes the three methods as the "self test" (a.k.a. the butterfly test); "the authority test" (a.k.a. what would Mamma say?); and "the public scrutiny test" (a.k.a. what would the neighbors think?) He notes that these tests are not based on logic or rationality: "failing one or all of these does not make choices right or wrong but merely helps us identify the conflicts we are facing" (p. 1).

The self-test, or butterfly test, which Navran notes is a purely internal response, is sometimes called a gut reaction. He lists several questions that might arise regarding the cause of this feeling of gut discomfort. He notes that this test is the one that "weakens with repeated use. Apparently we learn to get comfortable with decisions and actions which might have caused us ethical conflict or discomfort earlier. We are adept at using rationalizations to explain why what we know is wrong isn't really wrong for us in given circumstances" (p. 2). Navran's authority test focuses "not so much on the outcomes, as the values you are choosing to compromise" (p. 2). He asks us to consider what those whose opinion one values or heeds would think of one's behavior. The public scrutiny test asks questions relating to the "world's" knowing one's behavior because most decisions tend to become public eventually. Navran states, "It is the public scrutiny of our private compromises" (p. 2).

Although these three quick tests have limited value in many situations, they do help the LNC develop awareness that an ethical conflict exists that may require further consideration. At the end of this chapter, one method is provided of assessing and dealing with ethical issues that become evident out of this process or any other process that produces awareness of an ethical conflict or incongruence.

Ethical Conduct for Attorneys

The Inception of a Legal Code of Ethics

The American Bar Association (ABA), a voluntary professional association of attorneys, has influenced the development of the legal profession's code

of ethics since the early 1900s. The *Model Code of Professional Responsibility*, with its nine canons and corresponding disciplinary rules (DRs) and ethical considerations (ECs), became effective in 1970 and set forth standards for professional legal ethics. In 1983, the *Model Rules of Professional Conduct* was approved by the ABA to replace the model code (ABA 2000). The *Model Rules of Professional Conduct*, 2004 edition, is used as a reference in this chapter. Although the ABA has no real authority to enforce these codes or rules, the organization's rules do provide guidelines for the development of each state's code of legal ethics for attorneys.

States have the jurisdiction to adopt and enforce the ethics code under which attorneys in that state are bound. Although most states have adopted the ABA's model rules in some form, each state handles the responsibility for interpretation and enforcement of ethical attorney conduct through the state bar association or other responsible system.

Legal ethics attempt to identify and guide ethical conduct in order to protect the attorney's client, the judicial system, and the general public. Unethical attorney behavior, as well as any illegal behavior, may result in consequences that include reprimands, sanctions, suspension of license, or even disbarment. Under the preamble of the *Model Rules of Professional Conduct* (ABA 2004), paragraph #7 states, "Many of a lawyer's professional responsibilities are prescribed in the *Model Rules of Professional Conduct* as well as in substantive or procedural law" (p. 2). Paragraph #19, under the *Scope*, states, "Failure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process" (p. 4).

Example

A recent *ABA Journal* report online (Ward 2004) described an "attorney's scheme to snag clients from another firm by picking messages off its answering machine…." The attorney devised a method of obtaining another firm's clients' names and contacting them before the firm whom they had called could contact them. This attorney pleaded guilty to "misdemeanor charges of criminal impersonation." He was not only disbarred in 2001, he and the firm for which he worked at the time also were sued by the firm from whom he "stole" the names. The plaintiffs (the law firm from whom he stole the names) were awarded approximately $100,000 in compensatory and $1.3 million in punitive damages. Even though the firm for which he worked stated that it was "a shock to us," they did not act to investigate how an attorney just out of law school for 1 year could "refer over 100 cases to [his] law firm." His employing law firm is held responsible through the *Model Rules of Professional Conduct* rule 5.2, which states that it is responsible for behaviors of a subordinate lawyer.

The Attorney's Responsibility for Nonlawyer Assistants

The attorney and the LNC have codified rules of ethics to guide them; however, attorneys are *compelled* to meet their ethical standards and LNCs are expected to meet theirs *voluntarily*. An attorney also may be held responsible for the activities of an LNC whom he or she has hired or contracted to work on a case. Rule 5.3 (ABA 2004, p. 97) states that, "…with respect to a nonlawyer employed or associated with a lawyer: (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurances that a person's conduct is compatible with the professional obligations of the lawyer" (author's emphasis).

The comment section following this rule states that whether these assistants are "employees or independent contractors…. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment…and should be responsible for their work product" (p. 98). Although the responsibility of the lawyer for the proper supervision and ethical compliance of the LNC is clear, it is also the responsibility of the LNC to be aware of and maintain appropriate ethical behavior in the involvement of any legal issue. The LNC who commits an ethical blunder, even in ignorance, could possibly cause a disciplinary problem for a lawyer client. This would likely also result in the LNC losing integrity with peers and clients and losing business from all who learned of the behavior.

Example

An attorney is not allowed to make direct contact with the opposing party. In one situation, a plaintiff attorney asked his LNC to call the defendant nurse to ask what happened during the incident under suit and to tape record the conversation so that he could hear what the defendant nurse said.

Assessment: For the nurse to be aware that this is an improper request, he or she needs to understand the ethical conduct required of the attorney. If it is improper — unethical — for the attorney to do this, it is improper for the LNC. This is a situation in which there must be an awareness of an unethical issue, as noted by Trevino and Brown (2004). Even if the LNC does not know the requirements of ethics for the attorney, this situation should cause the LNC concern — possibly, a gut reaction. What are some ways in which the LNC could handle this situation? Because the attorney is "in charge" of the situation, should the LNC just do as asked? What responsibility does the LNC have to assure an ethical outcome of this or a similar situation?

When not to Take Work from an Attorney

Most LNCs understand that one should not take on a case in which there is a conflict of interest. Some other occasions might stir ethical concern sufficient

to make the LNC question whether being involved with an attorney in a given case is an appropriate action. An attorney who asks an LNC to perform services that conflict with the attorney's stated rules of legal ethics as the LNC understands them, or with the LNC's ethical code, is not a desirable client. Occasionally, the LNC may be unsure of the professional ethics of the situation but may believe it is not appropriate or, at least, may feel uncomfortable with the situation. On these occasions, the LNC should request clarification from the attorney or even state exactly why he or she feels uncomfortable performing this service. The LNC who is knowledgeable of the legal ethics will be able to ask timely questions in order to clarify the issues or to determine whether doing work in a given situation is based on appropriate ethical judgment.

Example

An LNC prepared a behind the scenes written report for a plaintiff attorney. The attorney was pleased with the thoroughness of the report and knowledge of the LNC and asked whether she would be the expert in this case rather than the behind the scenes consultant. The LNC knew that her report would then become discoverable to the other side and stated that she did not think that would be what the attorney wanted. The attorney suggested that the report might "disappear." The LNC was straightforward in telling the attorney that she would be uncomfortable doing that. She offered instead to locate a nurse expert who would do a good job of presenting the facts in the case. The attorney agreed and no other requests verging on unethical behaviors have been experienced by that LNC with that attorney.

Assessment: Consider the issues involved in this case. What might have happened if the LNC had agreed to "lose" the report? What was the chance that the attorney would have dismissed the LNC from the case for not agreeing to be the expert? Would differing actions have caused a "better" outcome than what occurred — if so, for whom? How would the action of agreeing to do this affect the continued relationship of the LNC and the attorney?

Alternatively, consider the better outcome that occurred when the LNC directly addressed the issue when it happened. The LNC was aware of the discoverability rule and felt that it required her to be dishonest to "lose" the report. The LNC unhesitatingly stated her recognition of this and the discomfort she would feel in doing it. She did not accuse the attorney of any unethical behavior. Her attention was on her behavior, supported by knowledge gleaned from the legal rules; this meant that she would be required to compromise her ethics to do as the attorney suggested. Indirectly, the attorney was provided a lesson in personal integrity.

Professional Ethics That Affect the LNC's Practice

The Unauthorized Practice of Law

LNCs understand that they are not lawyers. Thus, they know that they are proscribed from practicing law. This is clearly stated in the AALNC ethics code VIII and in the *Model Rules of Professional Conduct* 5.5. Problems arise from a lack of understanding as to what the practice of law entails. *Model Rules of Professional Conduct* rule 5.5 speaks to this issue in the comment, saying that the "definition of the practice of law is established by law and varies from state to state" (ABA reference for state-by-state definitions of practice of law — http://www.abanet.org/cpr/model-def/model_def_statutes.pdf).

For LNCs, the general consideration of the practice of law, as it specifically affects them, is that it involves giving advice that has an impact on a legal issue or (an example of a state definition), as stated in part in the Georgia Statutes, "any action taken for others in any matter connected with the law" (author's emphasis). LNCs may feel safe in saying that they never "practice law"; however, if the LNC offers or accepts work of reviewing records for the general public in order "to determine if there is merit in a medical issue to bring a lawsuit" prior to the client contacting an attorney, that could be construed as the practice of law. Only an attorney knows the legal issues and ramifications involved in a given medical issue lawsuit, and it is the practice of law to determine whether the requested suit can be brought to litigation. That is not to say that the LNC cannot refer a case to an attorney if asked by persons who believe that they have a legal issue. However, the LNC would be wise not to review records or make any determinations regarding the case prior to referring the potential litigant to an attorney (D.M. Marino, personal communication).

Another potential misstep in this practice of law area could arise out of an attorney asking the LNC to do something in a case that would be beyond the bounds of law for the LNC. This might include meeting with a client or potential client without the presence of the attorney and without clear guidelines of what is appropriate for the LNC to do or say in the attorney's absence. The LNC may state or suggest some action that unwittingly oversteps the role of the nonlawyer assistant. The same issue applies if the LNC is asked to meet with an insurance claims adjuster to discuss the settlement in a case. This claims negotiation also is the practice of law and is inappropriate for the LNC. It is the attorney's responsibility to represent the client and to make the determinations of legal merit or to give advice and set fees. The LNC also has a responsibility to be aware of these legal requirements in order to protect his or her integrity in LNC work.

Example

A plaintiff attorney who accepted medical malpractice cases had a large number of potential cases backlogged for review. He asked an independent LNC to take all the records for review and to make a determination whether he should take the case. If the LNC felt the case had no merit, she was to write a letter stating the reasons and send the letter to the attorney to sign. Those cases that had potential merit were to be brought to him for further consideration.

Assessment: Should the LNC consider doing this work for the attorney? If not, why not? Is this not what the LNC does for plaintiff attorneys? If not, what is different? What ethical issues are at risk here? Although an LNC has the knowledge and training to identify departures from the prevailing standards of care of varied health care practitioners, the attorney, armed with this information, determines whether it is a viable cause of action to pursue.

Even in a situation believed to have little or no merit, the potential plaintiff expects and has the right to receive the advice of a legal practitioner. The LNC presumes to offer legal advice when stating that a case has no validity to be filed. The attorney is required to provide appropriate supervision to a nonlawyer and to be the person who states whether, as in this situation, sufficient legal cause exists to bring a lawsuit (D.M. Marino, personal communication). However, the LNC also should recognize inappropriate requests for services and act accordingly.

Conflict of Interest Issues

Conflict of interest is such a broad topic in the *Model Rules of Professional Conduct* (ABA 2004) that multiple rules address it. Rule 1.7 (a), regarding current clients, states that a "lawyer shall not represent a client if the representation involves a concurrent conflict of interest" (p. 26). Only if each client consents after being consulted on the issues may the lawyer represent both.

Similar conflict could occur for the LNC if asked to be involved in a case that would conflict with a clinical position held in a hospital or other facility currently or within recent years. The LNC would need to get permission from the facility as well as inform the attorney of the conflict. The element of trust rests in the ethics of the LNC to inform the attorney and employer of such a conflict and to take responsibility for resolving or avoiding it. This also applies to the LNC's involvement in a specific case. The LNC may not work for the opposing sides of the same case and should not consider working for two of the defendants in the same case unless both defense attorneys know of and agree to this.

The LNC who works clinically must not provide legal nurse consulting for or against the employing facility, whether the LNC is currently or recently

on staff. LNCs also should avoid involvement in cases filed against other facilities within the same corporate structure.

In considering conflict of interest, the LNC should take into account any personal beliefs such as pro or con abortion; disapproval of alcohol or drug abusers; strong beliefs regarding prolongation of life issues; etc. that would inhibit providing an unbiased and nonprejudiced involvement. Even behind the scenes work can be contaminated by such beliefs. The LNC is charged with providing work performed with the highest integrity of judgment and objectivity. When that is not possible due to closely held beliefs, the LNC has a conflict of interest.

Additional conflict may occur when the LNC personally knows one or more of the parties involved in the litigation. Concern for or dislike of a party involved can affect the LNC's evaluation. Even if the LNC believes she or he is fair and objective, there is the potential for unrecognized or unadmitted influence in assessment of issues. Some LNCs come into the business because of a personal experience with a medical–legal situation. This is understandable, but it also should be recognized that one's viewpoint in such a situation is more personal than objective and that errors or prejudices may arise due to this. The LNC should maintain awareness of personal prejudice and bias in order to prevent them from affecting work product.

Recognizing or admitting to a potential conflict of interest should be foremost in the LNC's mind before becoming involved in any case. This is an issue that should be included in the development of the business' mission statement and ethical goals. Up front awareness is the best defense. The LNC should keep some kind of log or database of cases that will help identify potential case conflicts. If one side has called the LNC to do consulting, behind the scenes or as a nurse expert, and the LNC agrees to that contract, then any approach by the opposing side must be turned down. It is also reasonable to tell the opposing side that the LNC has already been contacted about the case.

Other issues of conflict may be more personal, and LNCs may feel these beliefs affect no one else. If, however, the LNC is the expert witness, much will be discovered about the expert's background and experience. Any previously unadmitted involvement or conflicting areas that are found out would pose problems for the expert. Even the hiring attorney may find that the unstated information has tainted the case and may not think that the expert can be retained further.

Example

Mr. LNC had an independent practice in a large metro area for several years as consultant and occasionally as an expert; he worked for plaintiff as well as defense. At the time of this incident, he was involved as a behind the scenes

consultant on a case for a plaintiff firm and had located a nursing expert for them. After the case was filed, he received a call from another LNC who worked as a behind the scenes contractor for a defense firm. She began describing a defense case to Mr. LNC, wanting him to review it as the potential nurse expert. After the first few details of the case were described, Mr. LNC realized that it was the plaintiff case in which he was already involved. He stated of the situation, "I was trying to think of a way to stop her from revealing more about the case without telling her directly that I was already involved with the opposing side. I interrupted her and told her I was 'too busy' and 'not right' for the case. Fortunately, nothing of importance, such as defenses or strategy was referred to, and I was able to avoid hearing any further information."

Assessment: The expert witness must take responsibility for acknowledging a conflict of interest. What, if any, other action might this potential expert LNC have taken? What is the responsibility of the LNC seeking an expert for a case? How do LNCs protect the confidentiality of the case issues and yet inform potential experts about the case? How can the LNC check for conflict before discussing a specific case? How much information is too much to tell potential expert witnesses before they commit to considering a case?

The legal community is more of a "small world" than most LNCs realize, and some LNCs do not take this into consideration when searching for experts. Experts are expected to work for plaintiff as well as defense in order to indicate their objectivity on issues. Given this consideration and as a routine precaution, the LNC searching for an expert should determine any possible conflict of interest issues with that expert before presenting specific information regarding a case. Some possible conflicts might include employment in a particular facility, involvement with the opposing side of the case, or personal knowledge of persons involved in the lawsuit. Any LNC who does expert work should also check for conflict of interest issues, especially if the LNC also includes the broader service of behind the scene consulting.

Confidentiality Issues

Confidentiality is a core ethical issue for all who work in the medical field as well as those who work in the legal arena. The AALNC *Code of Ethics Code VI* and the ABA rule 1.6 clearly state this concept. In the *Model Rules of Professional Conduct*, rule 1.6 under comment (3) states, "The principle of client–attorney confidentiality is given effect by related bodies of law: the attorney–client privilege, the work product doctrine and the rule of confidentiality established in professional ethics." This comment further states that

> The rule of client–lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through the

> compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source (ABA 2004, p. 23).

Confidentiality of Medical Records

Several areas under confidentiality need to be specifically considered. A basic confidentiality concern for independent LNCs is the obvious protection and appropriate disposal of medical records, particularly with the newly emphasized rules of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The independent LNC must take precautions to protect the medical records in his or her care when working on a case. Records should not be left in the open for all to see. The LNC should have a private location to work on medical records and should store them appropriately when they are not in use. This might require locked file cabinets in some situations. When a case is closed, the records should be returned to the attorney client or they should be disposed of by shredding or other physically destructive means.

Confidentiality and HIPAA

HIPAA, enacted in 1996, and required that Congress to enact the health care privacy regulation or that the Department of Health and Human Services (DHHS) would issue health care privacy regulations. It fell to DHHS to propose regulations; the more recently published privacy regulations required compliance by April 14, 2003. These regulations addressed the "who, what, and how" that protected health information (PHI) about an individual would be accessed. These privacy regulations require a patient's consent before being able to disclose health data to employers, insurance companies, marketers, and so forth. The regulations also allow individuals the right to access their own information and request correction in such data. Individuals are also allowed to request additional restrictions on any disclosures. Finally, violators of the Privacy Act can be held accountable in criminal as well as civil courts (Atwood and Campbell 2003).

Some states have privacy laws that differ somewhat from the HIPAA rules. In a state case regarding privacy in Wisconsin, *Pachowitz v. LeDoux* (2003), the verdict went against an EMT who disclosed a patient's medical information to one of the patient's coworkers. The Wisconsin Court of Appeals "rejected the EMT's claim that disclosure to one person did not meet the state law's criteria for publicity" (Wojtylak et al. 2004, p. 623). The court further held that "disclosure of private information to one person or to a small group does not, as a matter of law, fail to satisfy the publicity element of an invasion of privacy claim" (Wojtylak et al. 2004, p. 623).

In another example, in Texas, the 2001 legislature enacted statutes broadening the definition of a "covered entity" to include "any person who…comes into possession of protected health information" (Wojtylak et al. 2004, p. 625). In April 2003, the Texas legislature repealed the portion of the statute that mandated compliance with these additional covered entities with HIPAA. This kind of information makes it compelling to have some knowledge of state privacy laws as well as HIPAA.

The confusion that followed the promulgation of HIPAA rules has yet to be clarified entirely. It begins with who the "covered entities" of this Privacy Act are. Any health care providers; health care clearinghouse; or group health care plans (there are exceptions for "small" and some self-administered health care plans), including health insurance issuers; HMOs; Medicare and Medicaid plans; and so forth fall under HIPAA. Law firms, particularly defense firms, and independent LNCs are not covered entities (other than the fact that law firms may have a health insurance plan that makes them a covered entity) under HIPAA but may be required to sign a business associate contract with covered entities. Title 45 under Code of Federal Regulations (CFR), titled Public Welfare, Subchapter DHHS, covers all aspects of HIPAA. At 45 CFR 160.103, (Public Welfare, August 3, 2004) a business associate (BA) is defined as anyone who:

> performs, or assists in the performance of: (A) A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
>
> (B) Any other function or activity regulated by this subchapter; or
>
> (ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in Sec. 164.501 of this subchapter), management, administrative, accreditation….

This would seem to include the work done by the LNC. However, an LNC may not be asked to sign a BA agreement because the law firm that has contracted with the LNC has such an agreement and believes that its BA agreement covers the use of the LNC. Some law firms may feel that no such agreement is required (usually, plaintiff firms who have signed authorizations from the client). The LNC should understand that the responsibility for initiating the BA agreement is not the LNC's. In any respect, the LNC involved

in any PHI about an individual should protect the privacy and security of such information so that no confidentiality is breached — as with all medical records. This same requirement pertains to any subcontractors of the LNC.

HIPAA and Technology Privacy and Security Issues

HIPAA indicates great concern regarding new technology and the electronic access to medical health data. Further security regulations proposed by DHHS regarding electronically stored and transmitted private health information have a compliance date of April 21, 2005 (Malek and Krex 2003). Again, it is the covered entity's responsibility to organize and implement these regulations, but these rules may have some effect on the LNC's work in the future.

The LNC also should consider privacy and security measures when discarding or selling an old computer. Be aware that whatever is on the hard drive can be discovered or even reinstated for use. Although this may not seem likely, it is still a possible breach of confidentiality because of the presence of information regarding personal health information and the comments and assessments done by the LNC. It is best to remove and destroy any hard drives on an old, retired computer. New hard drives are cheap enough to purchase if one wishes to offer the old computer for use by another. It is always better to take the extra precaution.

Of more concern in regard to technology and confidentiality is the apparent failure in judgment shown by a few LNCs when discussing case issues on the Internet, particularly on listservs. The LNC who believes case issues can be discussed with impunity — thinking that confidentiality is protected simply by leaving out names — is naïve, to say the least. It has happened, more than rarely, that an LNC or even an attorney on the opposing side has easily recognized the case from the information put on the Internet. Often, inexperienced LNCs are seeking direction with a first case to be done for a client. It is nonetheless disheartening to see. It may suggest to any attorney who might see such a posting that all LNCs are unaware of the need to protect confidential information about a specific client, case, or a strategy for the case. Attorneys take the attorney–client privilege and confidentiality rules seriously and may assume, on seeing situations such as this, that all LNCs are as unaware about needing to protect confidential client information.

If the LNC uses e-mail to correspond with an attorney client regarding cases, every effort should be used to maintain confidentiality. Word the information carefully. Add a confidentiality clause to the outgoing e-mail. Make sure the attorney client approves of this use of e-mail communication. The use of encryption in e-mails seems to be an option that will be open to all in the near future.

Nurses have long been aware of confidentiality practices about patients in the hospital and have also recognized the problem of "elevator talk" or "cafeteria talk" that could be overheard by someone who knows the subject under discussion, or who might assume that the nurses are talking of one patient when actually another patient may be under discussion. The rule is, do not talk about patients in any of these situations. This same reasoning holds when the LNC is involved in a medical–legal case; the case should not be discussed except with the client attorney or his representatives. Clarifying a medical point of issue in a case is very different from laying out almost the whole case to get "input" from others.

Work Product and Confidentiality

Work product, as noted in rule 1.6 comment of the MRPC, is covered by confidentiality rules also. A work product prepared for an attorney in consideration of potential litigation is protected from discovery by the opposing side. This applies only to the behind the scenes consultant; any notes or information relied on by the expert witness is discoverable to the opposing side. On some uncommon occasions, a work product may become discoverable, but this is through legal maneuvers and not in the province of the LNC to determine. However, an LNC who evaluates the medical records of someone who does not have legal counsel opens that information to possible discovery. The LNC was not doing this at the request and under the direction of an attorney, even though it might be claimed it was done with litigation in mind; thus, the potential client does not have the protection of legal counsel. This could cause an unintended breach of confidentiality and, as discussed previously, can be construed as the unauthorized practice of law by the LNC.

Example

A California Court of Appeals recently disqualified a lawyer and his experts in a personal injury case "after finding out the lawyer acted unethically by not disclosing he had obtained an opponent's confidential documents" (McKee 2004). The lawyer acquired, through inadvertent means, handwritten notes of a meeting between defense lawyers and their experts. He did not inform the opposing side that he had discovered these and, instead, used them for impeachment purposes during depositions. The judge stated that by the obtaining of documents, even inadvertently, and making use of such privileged information, the attorney had "violated ethical standards and 'placed the defendants at a significant disadvantage that could not have been removed by lesser sanctions' than complete disqualification." The Appeals Court judges agreed that the documents included not only an expert witness' statement, but also exposed the "attorney's impressions, including his evaluation of the strength

and weaknesses of the case…" (p. 2). The judge further wrote that "the absolute attorney work product privilege is just that, absolute."

Assessment: How would this situation apply if an LNC were involved in a similar situation? What would be the LNC's responsibility upon discovering confidential information from the opposing side? Should the LNC, or the attorney, even read material that he or she knows is privileged and confidential? It has happened that the staff in a firm has inadvertently copied the attorney's notes on the case and sent them out with copies of the medical records to defendants or to an expert witness location firm. If this should occur, the notes sent to an expert witness location firm or expert witness firm should be returned to the retaining attorney without the notes having been read (if possible). If an LNC expert witness location firm were to receive such notes, the firm should be aware that the notes should be returned to the attorney and not sent to the expert because that would mean that the notes containing the attorney's strategy would be open to discovery.

Ethics and the Expert Witness

Federal Rules of Evidence and Case Law Regarding Expert Witnesses

The testimony of experts is provided for in part in rule 702 of the *Federal Rules of Evidence* (FRE). These rules apply in all federal cases, but are only applicable in other cases if the state has adopted or adapted the federal rules. Each state has its own rules of evidence for state cases. FRE rule 702 notes that the testimony of experts is to "assist the trier of fact to understand the evidence or to determine a fact in issue…." The expert relies on "scientific, technical, or other specialized knowledge" and is qualified by "knowledge, skill, experience, training, or education" in order to offer expert opinion in a specific situation. These rules were amended in 2000. To rule 702 was added that "(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case" (FRE 2002).

Rule 401 in *Federal Rules of Evidence* speaks to relevance of evidence, defining it as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Prior to the *Federal Rules of Evidence*, scientific evidence often was admitted according to case law from *Frye v. United States* (1923), which stated the rule of "general acceptance" within the scientific community. After the inception of

the FRE in 1975, the Frye rule was still used in many states but the FRE gained acceptance in other states.

When defendants in a product liability case in California (*Daubert v. Merrill Dow Pharmaceuticals*) in 1989 were granted summary judgment due to the scientific evidence (or lack of this evidence) on the plaintiff's side, this became the impetus for an appeal and eventual Supreme Court review that ended up broadly affecting the presentation of scientific experts and evidence into the future. The Supreme Court reviewed the case and vacated and remanded it to the California Appeals Court in 1995.

Since that time, Daubert has become the touchstone for many years of discussion and further refining of case law related to experts and evidence. The Daubert case outcome gave judges the gatekeeping responsibility of determining admissibility of expert evidence and testimony based on whether an expert's testimony was reliable — that is, whether the testimony followed good scientific methodology and was relevant to the task at hand. The reliability of the testimony was to be judged, in part, by "…whether the theory or technique is generally accepted in the scientific community; whether it's been subjected to peer review and publication; whether it can be and has been tested; and whether the known or potential rate of error is acceptable (Daubert 1995, p. 1316).

These comments were taken by the Ninth Circuit Appeals Court from the Supreme Court's opinion and were noted as "illustrative rather than exhaustive; similarly, we do not deem each of them to be equally applicable (or applicable at all) in every case" (p. 1317). The Appeals Court also noted that the Supreme Court declined to set forth "a definitive checklist or test," even though the preceding factors were listed as consideration for the admissibility of expert testimony (Daubert 1995, p. 1316).

Daubert opened the door for case law changes in evidentiary rules, but it left many questions in the minds of the legal community. Additional cases that sought to further clarify the role of expert testimony followed. A 1997 Supreme Court case, *General Electric Company v. Joiner*, found that the studies on which the plaintiff expert relied in the lower court did not support the expert's testimony in this case. The plaintiff, Joiner, had argued that the inquiry (in appealing the case) was supposed to focus on the methodology, not on the conclusions that they generated (Eckstein and Thumma, no date). In this case before the Supreme Court, the Justices actually reviewed the record of the case and found that the testimony had been properly excluded. The Supreme Court indicated that the "conclusion and the methodology are not entirely distinct" and that nothing "requires a district court to admit opinion evidence which is connected to existing data only by *ipse dixit* (a dogmatic statement or a Latin translation of "because he himself said it") of the expert" (Berger 2000, p. 15).

In March 1999, the Supreme Court again addressed the issue of expert testimony in *Kumho Tire Co. Ltd. v. Carmichael,* which was related to whether judges gatekeeping responsibility extended to evidence of technical or other specialized knowledge as well as that of science. The Supreme Court noted that, although the decision in Daubert referred only to scientific knowledge, that was because the case involved scientific issues. In Kumho, the judge's gatekeeping role was reaffirmed for all forms of expert testimony; whether scientific or other, testimony must have a reliable basis in the knowledge and experience of the discipline involved. The Supreme Court noted that the four Daubert indicators of reliable testimony "may or may not be pertinent" (Berger 2000, p. 18). The Court stated that, in some cases, "the relevant reliability concerns may focus on personal knowledge or experience." When testifying, the expert was to employ the "same level of intellectual rigor" that the expert would use when working in the relevant discipline (p. 19).

The case law determined from these cases and others has had a profound effect on the selection and presentation of expert witnesses. In "Reference Guide on Medical Testimony" (Henefin et al. 2000) from the *Reference Manual on Scientific Evidence*, the authors discuss the applicability of this case law to medical testimony. They cite several cases of nonmedical malpractice physician testimony that were excluded for reasons related to the case law. However, they state that the reference guide does "not address admissibility of testimony on the standard of care in medical malpractice cases."

Their reasons include that most medical malpractice is litigated in state courts (as opposed to federal) and that most medical testimony is that "the standard of care for physicians (like that for other professionals) is the customary level of care provided by competent physicians in the same field" (p. 446). They further state that "the admissibility of expert opinion on the standard of care is decided according to whether the witness is qualified to opine on the same field as the malpractice defendants" (p. 446). The LNC who does expert witness work or who obtains other experts for attorneys should be aware of these rules and of state rules of evidence because most medical malpractice is litigated in state courts.

Ethics Regarding the Testifying Nurse Expert

The first ethical rule for the nurse expert witness is that one should testify only in areas in which one has specific expertise. This protects the attorney client, the litigant, and the nurse expert. Testifying as an orthopedic nurse expert, when one's experience has only been with occasional patients with orthopedic problems, does not necessarily meet these requirements. The nurse's presentation of his or her abilities to the attorney client should always reflect the truth of experience and specialization.

Nurses do not have standing to testify against physicians or other medical staff except under unusual circumstances. One exception known by the author is the situation of a physician giving an injection; this became the central issue of a legal suit. The nurse was seen as having specific knowledge and training about giving an injection and was thus allowed to testify. However, an ethical issue involved in a less specific nursing issue might relate to the LNC misleading the client into believing that he or she had the same knowledge as a physician. Of course, the attorney should be well aware that nurses are not allowed to testify in these situations.

Another consideration that follows closely on the specific area of expertise is that the nurse should not make false or exaggerated statements on a CV. Very little will discredit an expert faster than lying on a CV or resume. Carol Henderson, a law professor at Nova Southeastern University (Hansen 2001), says that "statistics show that 30% of all professional resumes contain false information" (p. 20). She also says that "a lawyer who takes a resume at face value does so at his or her own peril" (p. 20). Most attorneys will check a resume carefully, especially that of the opposition. Education credentials will be checked and written materials of the expert are often reviewed. Any past testimony is likely to be reviewed as well, with an eye toward contradictory statements and any false statements that might have been brought out in other depositions. Be assured that false or exaggerated statements will eventually be discovered.

Marketing for the Expert Witness

Marketing an expert practice is a gray area for most. Although it is necessary to get one's name out to those who hire experts, this still puts a commercial face or "expert for hire" on expert testimony. When testifying is a large or even the greater portion of income, the expert is often looked upon as one who will play for pay. The ethical expert will balance testifying with continued clinical experience. The LNC whose only practice is testifying is better served to remain full time in the clinical setting. Some firms will not use LNCs as experts because they feel that they are, in a sense, tainted because of the decision to become part of legal, nonlawyer professionals. Some firms want an expert whose experience is clinical practice only (E.K. Zorn, personal communication).

Marketing an expert's practice is preferably done by showing evidence of knowledge, skill, preparedness, and integrity for the client. Referral and word of mouth of a thorough and professional job will attract lawyers' attention from both sides. Networking with other LNCs and attorneys at meetings, as well as other networking opportunities, is another acceptable way of marketing to become known as an expert. Having one's name listed on some of

the expert witness lists is acceptable to some firms; it is not in others. LNCs should always consider carefully any approach to "advertising" themselves as experts. Many times, the advertising is more harmful than helpful in obtaining work.

Testifying for Plaintiff and Defense

Another concern for expert witnesses is to attempt a balance in the number of cases done for plaintiff and defense attorneys. An expert who shows a proclivity for one side by testifying for that side all or most of the time is often taken as biased. This not only is a potential ethical issue but also can have an impact on the expert's effectiveness. It is easier to discredit an expert who testifies only, or mostly, for one side.

The ethical expert witness is involved in a case to "assist the trier of fact to understand the evidence or to determine a fact in issue…" (rule 702). Note that "fact" is the basis of the witness' testimony. All opinions in regard to the facts should be clinically supported — not simply *ipse dixit* information. Stanley Brodsky, in his book, *The Expert Expert Witness* (1999), states as a maxim that one should "[N]ever make up answers, keep your answers carefully in the context of what you know and remember…" (p. 22). In another maxim (p. 70), he states, "Do not construct illusory support for opinions or methods…" (p. 70). The nurse expert should be prepared regarding the case issues and be thorough in reviewing all documentation for those issues; when information is not known, he or she should state such.

Dependability of the Expert

Testifying as an expert can be stressful. On some occasions, an LNC has accepted work as an expert and failed to fulfill the role, for whatever reason. The ethical LNC, as noted on AALNC Code VII, "is accountable for responsibilities accepted and actions performed." Not following through on promises, particularly as one who is the testifying nurse expert, can cause numerous problems for the attorney, the client, and, quite possibly, the LNC involved. The LNC is exposed to potential litigation for a case in which time and money are lost due to the expert's withdrawal. If the LNC finds, for whatever reasons, that he or she cannot complete a case as a testifying expert, there is some support for returning at least part of the fees collected for the contract — especially if a retainer has been paid. Whether to keep monies sent as a retainer is an ethical issue to be resolved in the individual situation.

The Expert is not an Advocate of Anything except the Facts of an Issue

Some find it difficult to understand how opposing experts can have such diverse views of the same situation. Justice Stephen Breyer, in his introduction to the *Reference Manual on Scientific Evidence* (Breyer 2000), states that "after all, different experts, in total honesty, often interpret the same data differently" (p. 7). For several years, medical groups have had concern over some of the expert testimony provided in litigation. One study, reported in the 1995 *American Journal of Obstetrics and Gynecology* (Fisher et al.), reviewed the depositions and trial transcripts of "four frequently testifying experts." Selecting microcephaly, an issue with some definitive parameters, the study attempted to compare the testimonies and determine the validity of the statements of these four experts. The study found inconsistencies and contradictions in several of the testimonies. Although the authors of the study felt that some of the inconsistencies were due to "gross carelessness," they believed others were due to "intentional perjury" (p. 1794). They felt that "only a small but insignificant minority [of experts] are incompetent or willing to commit perjury for financial rewards" (p. 1794); however, they also felt that improvement was needed regarding all physicians who testified.

Another study was done by anesthesiologists and reported in 1996 in the journal *Anesthesiology* (Posner et al. 1996). This study looked at expert opinion based on "implicit assessment based on unstated individual opinion" in contrast to "explicit assessment processes" that included specific criteria (p. 1049). The study method used pairs of anesthesiologists with no involvement in any of the cases to review and independently assess closed claim cases to determine a single item: whether "… the anesthesia care [was] appropriate, less than appropriate, or impossible to judge" (p. 1050). The conclusion was that "divergent opinion stemming from the implicit nature of expert review may be common among objective medical experts reviewing medical malpractice claims" (p. 1049). The authors also noted that:

> …the existence of conflicting expert opinion is often attributed to bias arising from monetary compensation by the plaintiff or defendant. Less obvious bias may occur when the expert develops a personal affinity for the plaintiff or defendant or for one or more members of the litigation team, introducing advocacy rather than objectivity into the opinions rendered (citing J. Katz, p. 1049).

The American Society of Anesthesiologists amended their *Guidelines for Expert Witness Qualifications and Testimony* in October 2003. Of interest in the guidelines for these physicians is the statement that "the ultimate test for accuracy and impartiality is a willingness to prepare testimony that could be

presented unchanged for use by either the plaintiff or defendant." The guidelines also state that the testifying expert "should be willing to submit such testimony for peer review."

As noted in the *American Journal of Obstetrics and Gynecology* article, "*The Expert Expert Witness*: Real Issues and Suggestions" (Fisher et al. 1995), the expert should be the "unbiased conveyer of information regarding the standard of care…and whether that particular standard was violated." Quoted in this article are the guidelines of the American Medical Association, which state that expert medical witnesses (p. 1793):

- Do not act as an advocate or partisan.
- Do not exaggerate.
- Inform attorneys of all unfavorable information.
- Do not try to bluff.
- Are frank about all financial arrangements.
- Answer all questions honestly and frankly.

Avoiding advocacy, bias, and the influence of personal beliefs may be difficult when providing expert testimony; however, the expert's integrity is at stake. Testimony is best based on definitive criteria found in good research resources as much as possible along with the expert's experience and opinion of the issues. Only the expert, at the time of any given situation, can assure the best and most ethical testimony for a case. It is the LNC's responsibility to aspire to this standard.

Example

A nurse was contracted to be the expert in a nursing home case for a plaintiff firm. She completed the review of the records and met with the attorney in preparation for her deposition. One week prior to her deposition, she became anxious and called the attorney and, with no good reasons provided, withdrew from the case. The attorney was astounded but could not, and did not wish to, force a witness to testify. He had to cancel the deposition, give notice to the opposing side of having no expert, and essentially start this aspect of the case over again with a new expert. The attorney calculated the loss in time and effort as well as money and made a decision to file suit against the nurse.

Assessment: What was this nurse's responsibility to the client? Are there any legal issues for this nurse to consider in withdrawing from this case? Even if legality is satisfied, what is the responsibility of the nurse who, for good reason (life and death issues) is unable to complete a contract as a testifying expert? If the nurse does have good reason, is she ethically responsible to return any of the monies paid because the contract was not completed? What

are the issues that the nurse should consider if this situation (having good reason to cancel) occurs when involved in a case?

Ethics Issues and the LNC's Business

Just as a nurse would write a plan of care for a patient, LNCs should write a plan for their businesses. A business plan does not have to be elaborate, unless the LNC is attempting to borrow money to set up the business. (See Chapter 1 in this text regarding a business plan.) Whether they are elaborate or simple, ethical considerations are part of developing a good business plan. The plan should take into consideration the business processes as well as accountability to the customer/client. Ethical issues that might arise in developing the business plan include billing and invoicing practices, record keeping, dealing with competitors, marketing, and so forth.

Ethics as Part of the LNC's Business Plan

When the LNC begins planning to set up an LNC practice, one of the first items on the agenda should be to set out one's personal ethical beliefs and determine how they will affect the business and the goals of the LNC. The business plan should be written with these ethical guidelines as a basis.

Writing the mission statement for the LNC business also should involve thinking about what the ethics are for the business and what the LNC wishes the client to know about how the business operates. A business plan and mission statement are not static documents; rather, they are dynamic in that they remind the business owner of the purpose and direction planned for the business. They may require revisiting on occasion to see if all is on track in the business. In the following topics are several items that the LNC might wish to consider when setting out ethical guidelines. Although not all may be mentioned specifically in the business plan or mission statement, it is important for the LNC to be aware of pitfalls and to prepare to avoid them when possible. Another consideration might include developing a business ethics policy that fits the business plan and mission statement.

Developing a Business Ethics Policy

Many businesses develop a written ethics policy. Although this may not seem necessary for a solo practice, it can help the LNC develop awareness of the specific ethical issues involved in the practice. This chapter attempts to help the LNC recognize the ethical issues involved in the legal and business fields and to provide suggestions to integrate this knowledge into the practice.

Therefore, writing out an ethics policy, even for oneself, may be beneficial in its influence on awareness of such issues.

All possible ethical issues cannot be covered in an ethics policy, but the basics for legal and business ethics can be stated and kept close at hand. An ethics policy for the LNC might include not taking contingency fees; providing security and confidentiality of records; being aware of and not using unethical marketing practices; billing clients appropriately; returning a duplicate payment made in error; treating cohorts and competitors with honesty and integrity; and so forth. One suggestion is to set out the ethics policy numerically, print it up in an interesting font, and frame it to hang by the desk. If the page has room, put the mission statement at the top. If not, consider framing the items separately.

Ethics in Marketing the LNC's Business

Marketing one's business begins with determining a name that indicates what it is about. Some legal and ethical issues must be considered when selecting a business name. Do not choose one that suggests, even unintentionally, that the LNC practices law. For example, an LNC may decide to call the business, "LNC Legal Services," declaring that the name means that the business provides services to the legal community. However, this title is confusing and would seem to suggest that the LNC can provide actual "legal" services; this would be the unauthorized practice of law. This is unacceptable, and, in fact, illegal.

The LNC should also be careful not to select a name that is already used by another. Given much crossing of geographic lines in this business, it can cause confusion and dissension. In fact, it is important for the LNC to have any selected name checked through whatever process is required by the state. A corporation's name should always be checked for potential duplication; this is done by the attorney advising in the setup of the corporation. A sole proprietor's name should be selected carefully after much checking and prior to advertising the business, as required by the state or municipality in which the LNC practices.

All marketing materials, including brochures, letters, resumes, and others, should provide honest and correct information regarding experience, education, and skills. As already referred to in the expert witness section, lying or misleading in written materials will cause the LNC to lose the trust, and the business, of clients.

Using misleading or deceitful marketing practices is obviously not acceptable. However, in some situations an LNC may unintentionally step over the line. The content of any marketing material or advertising must be carefully assessed. Promising to help the attorney win a case is misleading and may also be seen as advocacy on the part of the LNC. Promises set out

in marketing materials must be realistic ones that can be kept. Marketing the LNC business is a personal process and potential clients do not distinguish between the LNC and the marketing materials as far as integrity is concerned.

Ethics in Networking

Networking, a large part of the marketing process, is another area for consideration of ethics. Networking is not just getting one's name out there; it involves helping colleagues, sharing information, and providing resources to others. Networking does not mean "keeping score" of what is done for someone with the expectation of getting something back. It requires maintaining the trust of others and protecting confidentiality of their issues. Networking takes time, motivation, and effort (Harding 1994).

Some of the ethics issues involved in networking include not breaching a confidence that one has promised to keep. Also, the LNC should be fair to competitors; it would be unethical to share inside information that the LNC had about one firm with another firm or with one colleague about another colleague. It would be unethical to recommend that a competitor seek work from a firm that the LNC knows does not readily pay its consultants. Another potential networking ethics problem might be an occasion in which someone requests an action or revelation that makes the LNC feel uncomfortable. This should raise the awareness of the LNC to make a careful consideration of the facts in the situation before acquiescing to the request. Confidence and trust are important issues in the networking process. The LNC should not abuse these.

Example

Ms. LNC attended an ATLA (Association of Trial Lawyers of America) meeting, not as an exhibitor but as a paid attendee. During the breaks, she casually strolled around the exhibit room and loitered near a booth set up by a group of LNCs. She introduced herself to the LNCs who had the booth and found out that they were from her general geographic area, although she had not met them previously. As attorneys came near, she would begin talking with them about being an LNC and would give them her card.

Assessment: Was this LNC ethical in her networking? Why or why not? Would you expect Ms. LNC not to network at the meeting? How, when, and where should she do her networking at this meeting?

Competing Ethically

Every business venture has competitors. The LNC business is no different. Competition should encourage an achievement of higher standards of work, not an attempt to make competitors look bad. In many situations, the LNC's

competitors are friends. Even if they are not friends, competitors are not the enemy. These are nurses who are offering the same or similar services to those of other LNCs. In the long run, competition is healthy.

For this author, the first issue in the competitive environment of the LNC is to recognize that denigration of other LNCs, or any others who are seen as competitors, does not improve the work or the integrity of the LNC doing the denigrating. Although disagreements within the profession may occur, disparaging a competitor to a potential client or to others only makes the one doing the disparaging look bad.

Undermining other LNCs in any way is a poor method of gaining clients. This includes undercutting fees as a competitive measure. Although not all LNCs charge the same fee, to offer to do a job at a cheaper rate than a competitor smacks of undermining a specific LNC. Doing this is likely to backfire on the LNC who uses such a method. Offering to do the work for an unusually low fee may prevent the LNC from appropriately raising fees in the future. It is also possible that the attorney involved might consider the LNC so desperate for work that he or she would not wish to use the LNC. The attorney may believe that the reason for the desperation and low rate is that the work product may not be of the highest caliber and thus the LNC has not been able to obtain or keep clients.

Using Materials and Work of Others

As LNCs gain experience in consulting or performing expert work, they will often offer help and support to others. This may be through a formal or informal mentoring process and may even include some who are, or will be, competitors. LNCs receiving this support should show regard for the help. Showing appreciation and giving credit where credit is due are part of developing one's personal ethics.

An area of some concern for all LNCs is that of avoiding copyright infringement, plagiarism, and nonpermitted use of another's materials. Many LNCs are willing to share a format or a process for preparing work product. Others may feel that their methods and forms, which took valuable time to construct, should not be used by others; they may even have the materials copyrighted. Copyright infringement is not a simple matter to understand; it is buttressed by statute and relief may be sought by civil action in such matters. The best method to avoid such problems is to request permission to use such materials. The nonpermitted use of copyrighted materials is unethical, but it is first illegal.

Plagiarism is another concept that should be a concern for the LNC. This chapter defines plagiarism as taking and using the ideas, writings, forms, and so forth of another without giving credit. Plagiarism may be intentional or it may be unintentional but careless behavior that occurs when the source of

the original information or idea is not properly credited. When LNCs use materials and ideas of others without permission and as if they were original to them, they are plagiarizing and thus unethical.

At other times, ideas are presented as original by an LNC; however, when they are researched, it can be determined that the LNC was, in fact, not the original source. Even though ideas cannot be copyrighted, an original idea might be plagiarized. LNCs would do well to remember the definition and impact of plagiarism when they prepare reports for clients as well. It is important to cite sources from which information is gained. This citation of legitimate and relevant studies and text information strengthens the assessment presented by the LNC.

Numerous sources on the Internet can help one understand and learn to avoid plagiarism. The University of California at Davis has a helpful site called "Avoiding Plagiarism: Mastering the Art of Scholarship" (UCD 1999). Plagiarism is often part of an unethical competitive behavior. Being informed and aware helps the LNC avoid such behavior, even that which occurs unintentionally.

Ethics Related to Fees and Billing Practices

Many LNCs find it difficult to determine what their fees should be. The subject of what to charge is often avoided on listservs and Internet forums for the LNC in order to prevent the appearance of price fixing. The newly practicing LNC must come up with a method or obtain information about how and what to charge appropriately for services. The subject of no contingency fees has been covered previously.

Pricing a product or service is influenced by several things: the target market characteristics; services provided; competitors and what they are charging; customers' perceptions of value; and estimated demand or volume of work (Mullins et al. 2005). LNCs should be aware that different services may require or have different fees. For example, some LNCs charge a set fee for locating experts, but others charge an hourly rate. Another example is that a testifying nurse expert will charge more for services than the behind the scenes consultant. Additionally, some LNC practices offer other highly specialized services such as preparing demonstrative evidence. Competition for the services must also be taken into consideration. All these pricing influences have possibilities of ethical concerns.

One issue to consider in pricing is the perceived value of the services offered. This is not always under the LNC's control, but marketing materials should not make promises of services that the LNC is not able to provide with good value to the client. The attorney clients should recognize the value of the LNC's work when the work product is of excellent quality and thoroughness. The LNC then develops a trusting relationship with a client in

which the client assumes all work will be of the same excellent quality. Increasing the quality and dependability of services through increased experience, as well as adding new services, will allow the LNC to increase prices for services. The client must perceive the value of services for a price increase as well.

Another method of setting fees is to consider what it costs monthly to be in business and to add to that cost what the LNC would like to make. This is then extrapolated out to the number of hours the LNC expects to work. The weakness of this method is found in what some LNCs believe they should make an hour above the cost of business. Because the number of hours that they may be able to work depends on the demands of the business, this is uncertain. Also, the lack of experience in business may cause the LNC to overlook some of the costs of being in business. The LNC may not charge one client excessively in order to meet a previously set monthly expectation.

Considering all methods for setting fees for the LNC, it appears that determining the range of local geographic fees for the same type of work is one of the best ways. Some might still have a concern regarding this as "price fixing," but knowing a range of fees in the geographic area should be seen as an appropriate reference for the LNC to choose to determine the rate. As the LNC gains skill and experience in providing good work product, fees can be raised accordingly.

Billable Hours and Invoices

Setting up a schedule of fees for services is only part of the process of billing a client. Those who work or have worked in law firms usually understand billable vs. nonbillable hours. Billable hours are those that the LNC works on specific client case. Nonbillable hours would include time spent preparing the billing/invoice for the case or the hours spent marketing for work. Certain aspects of work regarding a case are not billable to the client. The individual LNC must determine which of the work is not ethically billable to the client.

One aspect that falls under this consideration is the "learning curve" of the LNC. It is unfair to charge a client for excessive time spent on a case due to the uncertainty of what and how to do certain things, as well as for inefficiency of reviewing files in the beginning of a practice as LNC. Although it is agreed that the LNC has a right to charge for actual time spent (billable hours) on a given case, it is also the LNC's responsibility to consider how much lack of experience extended that time. A pragmatic consideration here is that the attorney may not use an LNC again if he or she feels that the LNC charged more time than seemed reasonable.

Developing an informative format for billing the client is also important. The client has a right and often will demand to know how and on what the time was spent. The invoice should clearly indicate this. Other issues to

consider when creating an invoice for a client are to decide what direct costs will be charged. Small items, such as now inexpensive long distance calls, are often listed but not charged to the client. Charging for inexpensve supplies such as paper clips, binding clips, and so forth makes the LNC's business appear to be "nickel and diming" the client. This type of charge, especially when the LNC "pads" the cost, is viewed with skepticism and could be seen as unethical. Some items are simply the cost of doing business.

Many LNCs ask for a retainer before providing services for a client. When the retainer is larger in amount than the actual time charged for the work, the LNC should return the unused portion of the retainer to the attorney. Although the LNC may cringe at this thought, it is part of maintaining one's integrity — important to oneself as well as to developing a trust relationship with the client. Professional and ethical behavior in billing clients for work done is an important consideration for the LNC in business. Truth and fairness are paramount.

Example

Ms. LNC was asked by a legal assistant in an office — at the attorney's request — to invoice services for one plaintiff under another plaintiff's name. The office had just received a settlement in the case of the second plaintiff and payment was to be taken from that settlement. The first plaintiff had a case that the attorney had decided not to pursue. Ms. LNC refused to alter her invoice and sent it, as appropriate, for the first plaintiff.

Assessment: What might be the outcome of Ms. LNC not going along with the request to change the invoice? What other options, if any, did she have in this situation? What options should the LNC consider in doing other cases for this client?

Expanding Ethics as the Business Grows

When the LNC decides to grow the business to include employees and/or subcontractors, it is essential to expand the ethical considerations of the business. The ethics policy should be reassessed. Employees and subcontractors will need to be cognizant of the ethical methods that the LNC owner has endorsed for the business. These will include ethical consideration of how to treat employees and subcontractors and should also help employees understand ethical responsibilities expected of them. Business plans and goals are flexible; however, the ethical underpinnings are not.

The owner/employer has responsibilities to the employees and the subcontractors to provide a safe and encouraging workplace. Additionally, the needs of the employees are considered in the way of necessary benefits. These

may include a retirement plan, a health insurance plan, continuing education options, and so forth. Although not all LNC firms will be large enough to furnish all, or any, of these benefits, the employees deserve the best that the owner can provide.

Alternatively, the employed or subcontracted LNC owes an ethical duty to the owner. The employee is accountable to uphold the ethics and policies of the owner/business. Employees and subcontractors are responsible not to divulge company information or processes and not to use these for their own benefit without the prior approval of the owner LNC. A former employee or subcontractor should not use any copyrighted materials or forms without permission. When any employee or subcontracted LNC leaves the nurse firm, there should be no attempt to contact or solicit the former employer/contractor's clients or to solicit the employees to work for his or her practice. Many times, the owner will ask that the employed or subcontracted LNC sign a noncompete agreement (see Iyer 2003, p. 1019 and p. 1023 for examples). Any other agreements that the former employee or subcontractor made with the former employer must also be honored.

One Model for Working through Ethical Issues

Numerous "models" are used to help the individual clarify and work through an ethical issue. One such model or method is found in *Legal Nurse Consulting Principles and Practices*, Chapter 10, at pages 233 and 234. Others can be found at the Website of the Ethics Resource Center (http://www.ethics.org). This chapter offers another method. As might be expected, the models offer similar approaches. Often, one's personal way of dealing with issues makes any given model useful.

- Define the problem with specificity.
  - "Who" and "what" are involved?
  - In what context did the situation occur?
  - How do you "feel" about the issue?
- Once defined, classify the situation if possible.
  - Is it legal?
  - If legal, is a clear "right" or "wrong" apparent?
  - Is the situation a dilemma of two "rights"?
- Determine which ethical codes are involved.
  - Does it pass your personal ethics test?
  - What professional code is involved?
- Identify alternative decisions and actions with anticipated outcomes for each alternative.
  - What is the WORST that can happen?

    - What is the BEST that can happen?
    - What can realistically be expected to happen?
    - Is the decision/action FAIR to all involved?
    - Will the decision/action "come back to haunt" you?
    - Would you be willing to share this decision/action with your family, friends, cohorts?
    - Could you defend this decision on a television show (e.g., Dr. Phil's show)?
- Decide on the most appropriate alternative from the preceding and ACT on it.
- Assess the outcome and use the experience to grow.
    - Are your personal ethics strengthened?
    - Are you better prepared to deal with another potential ethical problem?

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Managing Change

9

ELENA CAPELLA

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Introduction

Sometimes nurses wonder, "Why am I staying in my job?" "When should I change jobs?" "Is this really the right time to do something new?" These are common questions asked when one is in the career doldrums; yet it is very difficult for individuals to change careers. This is particularly true for nurses who have put a great deal of personal effort into meeting educational and psychological demands of the nursing profession. The successful transition from clinical nurse to legal nurse consultant (LNC) requires learning a variety

of new skills, attitudes, and behaviors. To prepare for the role transition to LNC, nurses must develop an understanding of change theory and how this conceptual framework applies to the practice of legal nurse consulting. Nurses who understand change theory are in a better position to anticipate, direct, and manage change in pursuit of their professional goals as LNCs.

Nurses may want to make a career change but hesitate because they feel that they have worked too hard to get where they are to change anything. They might be hospital managers with seniority and good benefits. Sometimes their anxiety is reinforced by family members' concerns. Nurses hesitant to make a change might ask themselves why they are reluctant to do something in which they are really interested. They may ask if they can envision themselves constantly in their current role or if they believe they are capable of doing something different. Legal nurse consulting will make good use of their experience and skills. Others are interested in the entrepreneurial aspects of the role. Whatever the reason for making a career change, it is important to be clear on what is motivating such a significant change.

Change Theory and Career Transition

Is it possible to have a job one really loves? Does one work to earn a living or is there something more? Is work a burden or an inspiration? These questions are at the core of any professional transition because work reflects personal and social identity. That is why the first question that strangers ask one another is "What type of work do you do?" Work is a reflection of who a person is and how he or she defines himself or herself. Nurses are known to be highly professional individuals with strong critical thinking and communication skills (Ulmer 2000). Therefore, if nurses have these attributes, what stops them from pursuing an independent practice? One of the most significant barriers is the fear of change.

Change is a natural process that individuals experience periodically during their lifetimes. Although they are accustomed to changing the brand of automobile or décor of the office, changing one's job requires much deeper planning and self-examination. In California, nurses who give direct patient care have been in that position for an average of 8.7 years. (http://www. rn.ca.gov/policies/pdf/survey%20of%20registered%20nurses%20in%20California.pdf). When is the right time to change jobs and do something new? A job change is a big step because it represents a commitment to a new direction. It is important to make sure that a significant career change is based on skills, talents, and career goals because a change of this magnitude requires time, effort, and commitment.

Making a successful change involves overcoming inertia, which is the tendency to resist action. Individuals are generally more comfortable maintaining the status quo than accepting change because change represents ambiguity and uncertainty. Experienced nurses with well established routines might find change difficult. Even if work is not fulfilling, the desire is to continue doing a routine because doing something new may lead to disappointment.

Lewin (1948) described the change process as consisting of three distinct phases: unfreezing, change, and refreezing. The first phase, unfreezing, is the most difficult phase to complete due to the psychological resistance to change. Resistance to change is a natural defense that occurs when individuals process information that challenges preexisting beliefs. Once individuals accept the need for change, they begin to incorporate the new attitudes or behaviors that align with their understandings of how expectations can be met. Refreezing occurs when individuals involved in the change process accept new attitudes or behaviors and incorporate them into practice.

Motivation to Change

It is one thing to dream about becoming an LNC, but it is quite another to take the steps necessary to make the change. A change of this magnitude requires an examination of the motivation for changing careers. Maslow (1954) proposed that motivation is based on a hierarchy of five needs that starts with lower needs — physiological and safety — and progresses to higher needs — social, esteem, and self-actualization. He suggested that it is necessary to satisfy lower needs before meeting higher level needs. Thus, before an individual is able to satisfy the need for esteem, the individual must have fully satisfied the lower needs of the hierarchy: physiological, safety, and social needs.

In applying Maslow's theory to the process of transitioning from a clinical nursing position to an independent consulting practice, a nurse will want to make sure to have security in the form of financial reserves and medical insurance before making a change. Once basic needs are satisfied, the individual is free to pursue higher level needs, such as esteem and self-actualization. Self-actualization occurs when the work is satisfying, and motivation comes solely from within the individual. Although many individuals desire self-actualization, progression through the hierarchy of needs is often disrupted. Life experiences such as divorce and the loss of a job may cause individuals to stay at lower levels of the hierarchy. Indeed, Maslow's research showed that only one in ten individuals becomes self-actualized.

Long before the Christian era, the Greek philosopher Heraclites said, "Nothing endures but change." Today, one asks, "How can I endure change?" Anxiety about change is sometimes due to the unanticipated consequences that change can bring. When the writer made the decision to become an LNC, she knew that she would be doing most of her work at home and thus created an office in her home. Not until she started working out of her home, however, did she realize how difficult it was to know when to stop working. When she was working at a healthcare facility, it was clear that the workday ended at 5 p.m. The end of the workday was not that clear when she worked at home. No matter what the time of day was, one glance at the home office would give her a vague sense of guilt that she should be working. She ultimately learned how to structure her time to put her work and private life in balance, but the difficulty she experienced in resolving this issue surprised her. She thought that she had a well developed plan, but it had been developed with little understanding of how to manage time when working from home.

Change may be inevitable, but the particular aspects of change such as the intensity or speed are not predictable. Even a skilled, well prepared LNC cannot project which clients will contract for services or when. This creates an ongoing sense of anxiety about the amount of work that can lead to stress and burnout. The timing and sequencing of marketing can provide some control over workflow, but some aspects of an independent practice are always beyond the LNC's control. An understanding of change theory helps LNCs prepare for the demands of independent practice.

Barriers to Change

Researchers in the fields of psychology have analyzed the change process with special attention to resistance to change (Argyris 1983; Schein 1992). Study of resistance to change reveals that unfreezing results from a complex set of psychological processes. Argyris found that accepting the need for change is difficult because individuals have psychological defenses that support the continuation of the status quo. It is only when significant information disconfirms prior expectations that an individual begins to accept that change is necessary. Thus, change does not occur simply because an individual recognizes that driving forces outweigh restraining forces. Instead, change occurs when an individual overcomes psychological anxieties that prevent acceptance that change is important. Change will occur when the pain of not changing outweighs the risks of changing.

This research in change theory has implications for the nurse making a transition to independent LNC. Nurses begin their careers with the belief that they will be psychologically fulfilled by the role of staff nurse. Over time,

nurses may find that bedside nursing is no longer psychologically satisfying. Although this information conflicts with the nurse's expectation, he or she may continue to work as a staff nurse because it is steady work, with adequate pay and flexible scheduling. For any significant change to occur, the nurse must accept the disconfirming information that the work is psychologically unsatisfying by overcoming three significant psychological barriers.

The first barrier to overcome is denial that the change is necessary to meet an important need. Not accepting the need to change essentially keeps the individual at status quo. The second psychological barrier is acceptance that additional education is needed. It can be difficult for individuals to admit that they need training because this admission implies that, in their current state, they are less than perfect. A third barrier is unwillingness to take risks. Little in nursing education prepares a nurse to set up a business, learn to market, maintain a vision needed to expand, and risk failure. Leaving the security of a job, a familiar work environment, and a common way of viewing the world involves the ability to step into the unknown. The nurse contemplating this magnitude of change must possess self-confidence and determination.

The transition to becoming an LNC requires nurses to adopt new behaviors that are not typically used in the practice of bedside nursing. Some of the new skills that need to be mastered are chart review, analysis of standard of care, preparation of timelines, and interview of witnesses. Even the most seasoned nurse manager is a novice at one or more of these functions. Novice LNCs, particularly those who achieved a level of expertise in their former work, may experience discomfort during the learning process. It may take a while for novice LNCs to develop the sense of competency and accomplishment that they had in the clinical nurse role.

Nurses go through a significant learning process when they transition to the role of LNC. A novice LNC must discard old attitudes, beliefs, and skills and accommodate new ones that form the independent practice. The learner must develop cognitive structures to adapt and integrate new information (Piaget and Inhelder 1969). As information is received, assimilation is used to interpret the new information and place it in context. Once assimilation is completed, the learner must find ways to incorporate new information in previously developed cognitive structures. This process is called accommodation, and it is a difficult part of the learning process because it challenges previously constructed mental schemas.

Piaget defines schemas as constructed assumptions used to predict actions in analogous situations. Not all the assumptions used in the practice of nursing apply to the work of the LNC. An assumption that many staff nurses hold is that all plaintiff attorneys are eager to file claims at the slightest provocation. LNCs who work on medical malpractice claims soon learn the

four elements of negligence (duty, breach of duty, causation, and damages). The economic realities of litigation become evident to the LNC. For example, many nurses would assume that a patient who had received the wrong medication from a nurse would be successful in bringing a lawsuit for medical malpractice. Although a nurse might hold that assumption, a trained LNC would understand that the patient would need to show damages before a proper claim could be made.

Cognitive dissonance plays an important role in motivating the LNC to accommodate new skills. Cognitive dissonance is a psychological state induced when there is a discrepancy between what is already known and what must be known to meet a particular goal. Festinger (1957) described how individuals strive to eliminate dissonance by reconciling attitudes and behaviors. In an effort to eliminate dissonance, individuals incorporate measures such as seeking education, taking on work to gain experience, and networking with colleagues. These measures help individuals gain confidence in their skills and accomplishments, which ultimately brings current beliefs in line with prior assumptions and reduces conflict. Thus, the discomfort related to cognitive dissonance motivates individuals to take measures to reduce anxiety through learning new skills, attitudes, and beliefs.

Nurses who work in organizations enjoy a structured work environment, with clear roles, lines of authority, and compensation schedules. Working in a structured environment has its benefits, some of which may not be apparent, such as the camaraderie of working with other healthcare professionals, stable hours, flexible schedules, and benefits. Nurses who transition to the role of independent LNC encounter new and unanticipated demands, some of which can be daunting. The independent LNC may initially work alone and be paid on a contractual basis for services rendered. Nurses who transition to the role of LNC benefit from preparing for change and addressing perceived threats in advance of initiating a practice.

Schein (1992) describes how creating a sense of psychological safety promotes acceptance of change. Psychological safety occurs when individuals believe that change can be made without harm to their personal values or integrity. Individuals are more likely to participate in change if they think that failure is not likely. Thus, creating psychological safety is an important factor in overcoming denial and learning anxiety. Some ways to create psychological safety are to join an online forum and communicate with other LNCs; obtain formal and informal training; join a support group; and interact with mentors who provide positive role modeling. The goal of creating a sense of psychological safety is to create an environment in which the individual is willing to learn and go through a process of cognitive redefinition. Cognitive redefinition is the process by which an individual explores the new role and evaluates whether it fits with existing values. Psychological

safety is an important precursor to cognitive redefinition. It gives an individual a safe place to practice new types of work with the support of training and role models.

Although nurses work within the domain of the healthcare system, LNCs negotiate their role within several domains, such as the healthcare, legal, judiciary, and regulatory domains. These are specialized realms characterized by the use of jargon and unique rules and values; therefore, an LNC must learn new languages as well as the norms and values of these cultures (Noonan 2000).

Another major change that the LNC faces is a redefinition of the concept of advocacy. In the nursing profession, advocacy can be traced to the written works of Florence Nightingale, where it is defined as advancing practice to improve patient care (Kolhnke 1980). Advocacy in the legal domain is defined as pleading for the cause of another; defending another's position; maintaining the rights of another; or recommending a proposal on behalf of another. The LNC works in the healthcare and legal systems to advocate for nursing practice that meets standards of care and to take a stand against nursing practice that does not meet standards of care. In the legal context, standards of care are written or established criteria for nursing care that all nurses are expected to meet. Because LNCs advocate for established standards of care, they advance the profession of nursing and/or law.

Ambiguity is inherent in the role of the LNC because he or she works between the domains of health care and law. Both of these domains have limited knowledge of the paradigms of the other, so the LNC often acts as the liaison between domains. Turner (1988) used the term *liminality* to describe the psychological state that individuals experience when they transition between domains. Liminality occurs when an individual separates from a former identity, in which norms and codes of conduct were fully understood, and enters a new realm characterized by ambiguity and uncertainty. Although LNCs are still nurses, they may experience a sense of separation from their nursing colleagues as they seek work in the legal domain. Some clinical nurses may regard LNCs as nurses who sell out to the legal profession; others see them as adversaries whom they may find testifying against them in the courtroom. Interactions with peers in clinical nursing practices can leave the LNC with a sense of isolation and loss of professional identity.

It is important for LNCs to have a clear sense of their role in advancing nurse practice and in clarifying practice that meets standards of care. To be suitable for work in this dual domain role, LNCs must not only be knowledgeable in clinical nursing and legal practices, but must also be clear about the role of LNCs in advancing nursing or medical practice. For example, Patricia Iyer assisted a plaintiff attorney in settling a large case involving a man who became quadriplegic. One of the issues in the case was failure to

perform a CT of the neck. Following the settlement, the plaintiff attorney and the LNC were gratified to learn that the education of emergency department personnel by the insurance company had resulted in increased use of CT scans. Thus, the activities or actions of the LNC improved compliance to the standard of care and provided benefit to future patients (personal communication, Patricia Iyer.

Clinical nurses who plan to make the transition to legal nurse consulting must develop comprehensive understandings of the LNC role prior to starting an independent practice. A thorough understanding of role theory and how this conceptual framework applies to the practice of legal nurse consulting can help nurses anticipate, direct, and manage change and prepare for the transition to LNC.

A role is defined as the expected and actual behaviors associated with a position (Hardy 1978). Role stress is experienced when the demands of a role are in conflict, difficult, or impossible to fulfill. Ongoing and unresolved role stress leads to role strain, which is characterized by a subjective feeling of discomfort, resulting in lowered productivity and performance. Role theory suggests that when working with attorneys, it is important for LNCs to provide clear, realistic role expectations. LNCs who communicate their role effectively decrease the types of misunderstandings that arise from unrealistic expectations. For example, an attorney may expect support staff and associates to work long hours, particularly right before a trial. The attorney may similarly expect the same level of commitment from the independent LNC, without realizing that the LNC has other obligations.

When marketing, it is particularly important for the LNC to make sure that potential clients are aware of the distinction between the role of the paralegal and the LNC. Clients may question why they need an LNC when they have a paralegal on staff. The American Association of Legal Nurse Consulting's Website also contains a position statement on the issue of hiring an LNC (http://www.aalnc.org/hire/tips.cfm). This Website contains a position statement on the distinctions between the paralegal and the LNC that can be helpful in preparing for a discussion with an attorney (http://www.aalnc.org/hire/roll.cfm).

Fear of Failure

Although cognitive dissonance is a significant driving force for change, resistance — particularly in the form of fear of failure — is a significant restraining force experienced by individuals who make career transitions. Everyone fears the humiliation of failing at accomplishing something that he or she cares about. Some people would prefer to be overworked, underappreciated, and

bitter about being stuck in a dead-end job, rather than to face the possibility of failing at a new venture. People in this culture generally admire winners and pity losers. However, why are losers pitied when they showed courage and a willingness to learn by trying something new?

The author recalls feeling like a loser when she declined her first LNC job. Although she gave a professional reason for turning down the position, her real reason for not accepting the job was that she was afraid that she was not up to the task. It did not take her long to regret her decision, but her regret motivated her to make plans to try again after getting more training and peer support. Everyone fails, but failure is not a major problem unless people let the failure defeat them or keep them from trying new ventures. Instead of avoiding failure, some people feel free to try new ventures because they know that, even if the venture fails, they will learn from the experience.

This may seem contradictory, but truly successful people not only have failed, but also understand that failure can sometimes be a precursor to growth. Tom Kelley (2001, p. 232), the general manager of the highly successful design firm IDEO, uses the saying "fail often to succeed sooner" to show how innovative people value learning that results from failure. Thus, when individuals fail, they gain insight into what will make for success the second time around. Many people consider nurses who have been fired failures. Yet research performed by Iyer showed that a large number of nursing entrepreneurs reported having been fired at some point in their careers (personal communication, Patricia Iyer.

In making any decision to change something as important as a career, individuals need to be aware of potential pitfalls, but not paralyzed by them. Anxiety about failure can cause problems, but so can a false sense of security. In any career transition, it is important to consider the strengths and weaknesses of a career plan. Keep in mind that anxiety about not meeting expectations is associated with the fear of failure, but is not itself a failure. The fear of failure is related to the uncertainty about what will happen, so it is more likely to occur when insufficient thought is put into transition planning. If a career plan fails, most people can accept the bad news once they really know that it is will happen and learn from the experience. Individuals may not look forward to it, but they can adjust if they have some warning. Not knowing what is going to happen, however, creates anxiety, uncertainty, and a whole set of unpleasant visceral and psychological reactions. People have unique fears; thus, if they create individualized contingency plans to anticipate problems, they will be more prepared to deal with untoward outcomes. Having a back-up plan (and sufficient financial resources) can be helpful in reducing uncertainty and making the professional transition easier.

The following sections includes common sense strategies for planning a career transition. These strategies help individuals clarify their motivation,

expectations, and fears. The book *What Color Is Your Parachute? A Practical Manual for Job-Hunters and Career Changers* is a useful guide for career transition (Bolles 2004).

Be Clear on the Goals

Everyone has certain goals that make life worth living. For many, it is the need to be appreciated or admired by others. To earn the appreciation of others in a new environment, it is necessary to understand the prevalent rules, values, and expectations in that environment. Thus, to experience esteem and self-efficacy in a new role, one must develop an understanding of the role, assess current skills, identify the gap in a skill set, and create a plan to develop the necessary skills. If one does not have a clear idea of the skills needed prior to a professional transition, most likely feelings of inadequacy will occur when the new role begins.

Set Realistic Expectations

Many people have a desire to be unique in some way and have found special niches within the nursing profession. The role of the LNC offers an additional opportunity to highlight unique talents and skills. It is important, however, to be aware that others are competing for work. It is extremely unlikely that an independent LNC will experience success without a development period for communication, networking, and legal nurse consulting skills. If the LNC's goal is limited simply to getting work, he or she may meet a short-term goal, but neglect the more important goal of building a business. To build a business, the quality of work must meet or exceed client expectations. Establishing an expectation, such as providing the best possible service, is a much more realistic goal because it challenges the LNC to learn, rather than establishing a goal in which success or failure comes from competing with other LNCs for work. Setting a goal of achieving a large, successful, independent business within 12 months may be unrealistic for most LNCs.

Be Aware of Human Nature

Defense mechanisms, such as aggression or escape, are normal biological reactions to anxiety. Each person has a different response to stress; but some people get absorbed watching television or reading a newspaper while others get prolonged sleep but still wake up feeling tired. The problem with the overuse of defense mechanisms is that they cause one to lose sight of the problem. An awareness of problems is an important factor in developing strategies and solutions to resolve an issue. If the problems are vague, the solutions become more elusive and thus anxiety increases. It is helpful to be

aware of typical reactions to anxiety so that behavior can be monitored and problems resolved as they arise.

Examine Assumptions

One way to reduce the pressure that one puts on oneself when transitioning to independent practice is to examine assumptions. Is there a belief that success will follow if everything is done right and failure will result after a mistake? This mental set is an example of rigid, all or nothing thinking and it can be counterproductive to goal achievement. Anyone new to a profession will make mistakes, but the point is to minimize mistakes through adequate preparation and, when mistakes are made, to learn from them. In addition, some say that failure is part of a normal healthy life. People tend to fail at times in their lives, and if they learn to bend rather than break, they are much better at dealing with pressure. Another perspective presents the concept of unexpected outcomes. People do not fail; they achieve unexpected outcomes and learn from them.

Bring Fears Out into the Open

It is important to reduce the fear associated with a career transition by considering all the facts and emotions associated with this change in profession. By bringing everything out in the open, the LNC is in a better position to face fears and develop strategies for coping with them. Once the problem is faced, an individual can imagine what the worst outcomes of the problem could be and then consider alternatives. Once the worst scenario is realized and alternatives have been developed to deal with this scenario, one is relieved of a great deal of uncertainty and anxiety.

Planning the Transition to Independent Practice

Individuals who have not experienced career change may not fully understand the effect of this change on personal well-being, happiness, and health. A career change is often seen as an individual's private concern, but what about the effect of the career change on family, friends, and colleagues? To fail to recognize the complexity of change runs the risk of harm to health and personal relationships. Developing an understanding of systems theory helps individuals understand the complexities involved in a career change.

Systems theory has its roots in the deductive reasoning of scientific disciplines; however individuals undergoing career transition can also use systems theory to develop an understanding of what to expect when changing careers. von Bertalanffy (1967) explains that systems are composed of distinct

parts that come together in an integrated whole. When all parts of the system work together, the system is stable and in a state of equilibrium.

Periodically, the system and all its parts must respond to disruption in the environment to regain equilibrium. Equilibrium is reestablished when all parts of the system adapt to the change in the environment and reintegrate into a fully functioning unit. If the subsystems experience disequilibrium, measures must be taken to reestablish equilibrium or the system will enter a state of entropy. Entropy is a state of deterioration so serious that, if not corrected, leads to the failure of the whole system (Morgan 1997). The goal of planning for change is to provide for a smooth transition that quickly reestablishes homeostasis. The use of systems theory helps one to appreciate the complexity of change and its effect on interdependencies within the system.

Imagine that well-being is a system made of a number of subsystems (Morgan 1997). With this model in mind, consider all the subsystems that contribute to well-being, such as adequate challenge; competence; esteem; recognition; family support; sufficient salary; and medical benefits. Well-being, like a living organism, responds to changes in the environment. Just as a living creature regulates its temperature by moving to a warmer location, a nurse may be drawn to a challenging new career. For success in this new career, however, all the subsystems that contribute to well-being must be adapted and reintegrated.

Research on the process of change conducted in the 1940s revealed that change goes through three progressive phases: planning, action, and evaluation (Lewin 1948). Planning is the act of foretelling what the future will be like based on past observations, experience, or reason. Consistent with systems theory, it is necessary to understand the system and its parts to predict anticipated effects of change. The planning process requires gathering information, developing weighted evaluation criteria, performing careful assessment, and advancing a plan. The action phase begins when the plan is implemented and put to test; however, the action is not the end of the change process. Evaluation is needed in the form of ongoing monitoring and assessment to verify that the action plan continues to meet expectations. If the plan does not meet expectations, the process is repeated beginning with the planning process.

The innovation–decision process expands on Lewin's concept of planned change by describing how individuals adapt to change (Rogers 1995). Rogers describes five stages through which individuals pass in the process of change: knowledge, persuasion, decision, implementation, and confirmation. Using the innovation–decision model to explain career transition, knowledge occurs when a nurse discovers a nursing specialty called legal nurse consulting and gains an understanding of the role through reading or networking with others. As the nurse forms a favorable attitude towards the role of LNC, he

or she enters the persuasion phase. The phase of decision begins when the nurse initiates activities that lead to adopting the new role. Implementation occurs when the nurse performs work as an LNC. The last phase, the confirmation phase, is an important factor in sustaining the change. When the LNC obtains positive reinforcement that supports the decision to become an LNC, the confirmation phase is completed. If, however, the LNC finds that expectations were not met, the feedback may reverse the decision to adopt the change. An understanding of the stages addressed in the innovation–decision process can help the nurse recognize important milestones of career change.

Lewin (1948) proposed that change be analyzed by evaluating the facilitators and barriers of change. The evaluation model that resulted from early work on change theory is called *force field analysis.* This type of analysis involves identifying the driving forces that direct behavior away from the status quo and restraining forces that hinder movement. Force field analysis is more than a method of weighing pros and cons because it also provides insight into how to reduce the impact of the opposing forces while strengthening supporting forces.

Today, this analysis tool continues to be a popular technique used by organizations and individuals to identify driving forces and develop ways to reduce the impact of restraining forces. In general, change is more acceptable when driving forces outweigh the negative impact of restraining forces. Performing a force field analysis helps individuals to visualize factors that work for and against the change and to create an effective plan for the proposed change. Consider the force field analysis included in this chapter to see an example of how one might be done (Figure 9.1).

Creating a force field analysis requires some careful reflection, a piece of paper, and a pencil. Begin by drawing a line down the center of the paper. Label the top of the line *Status Quo* and the bottom of the line *Change*. On the bottom of the paper, write *The Way Things Are* on the left-hand side and *The Way I Want Them* on the right-hand side. Between these two statements, write *Steps to Get There*. Take time to create statements that are clear and accurately represent the current situation and future goals. Now list all the forces that drive the change to the left side of the *Status Quo* line and the forces that act as barriers to change to the right side of the line. Consider each of the forces and whether it is valid. A score may be assigned to each statement indicating importance on a scale of 1 to 10, with 10 the most important.

After listing the driving and restraining forces, it is time to sum up the weights and take a look at the graphic representation of the force field analysis. Now that the driving and restraining forces are weighted, begin to complete the gap analysis section by determining what steps are needed to

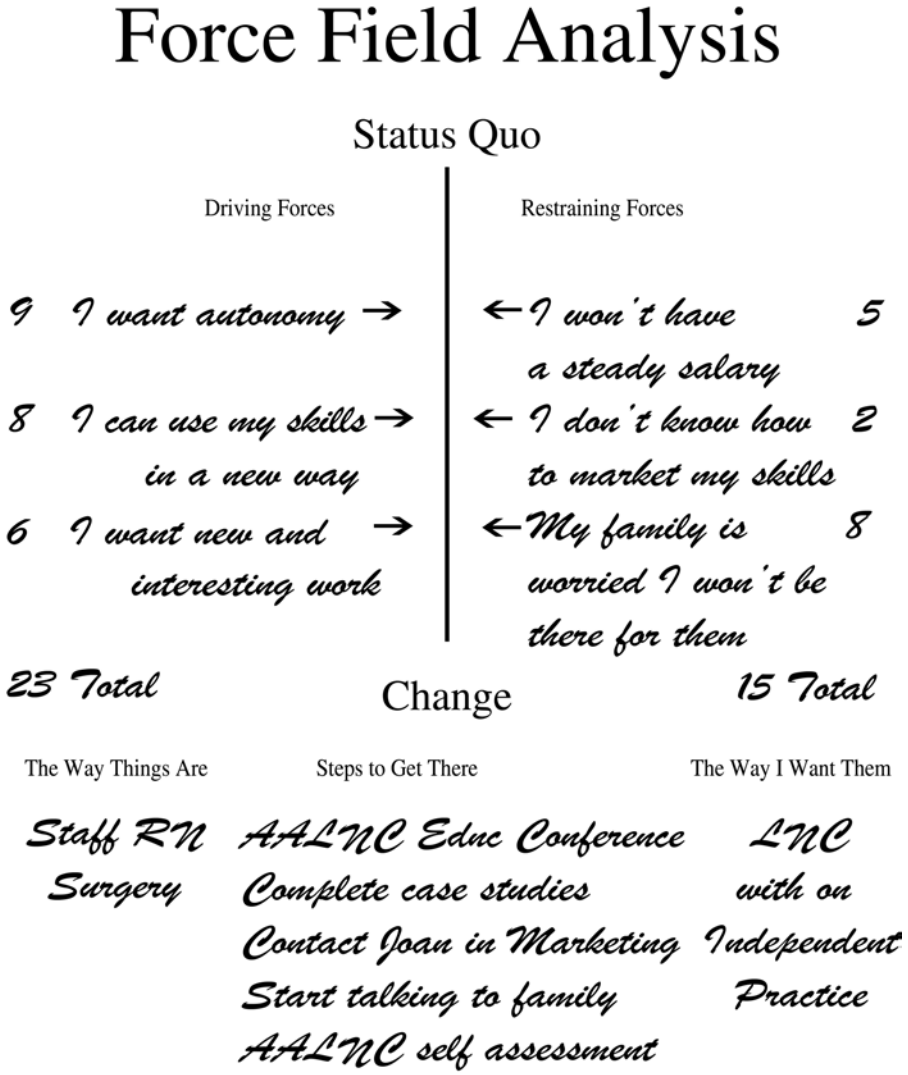

Figure 9.1 Example of a force field analysis.

meet the desired goal. The force field analysis will help the LNC envision the situation and develop an action plan that reduces restraining forces and increases driving forces. Of course, this technique requires careful consideration of driving and restraining forces because neglecting to consider important factors would have a negative impact on the planned course of action.

No matter how good the business plan, success will not come automatically. The U.S. Small Business Administration reports that over 50% of small businesses fail in the first year and 95% fail within the first 5 years (http://www.sba.gov). Foresight and organizational skills are essential, but

they do not guarantee success. Ames (1995) states that lack of experience and unexpected growth are two of the ten most common reasons for business failure. For the right person, the advantages of business ownership outweigh risks. A nurse who wants to be his or her own boss, does not mind hard work and long hours, and sees a business venture as having potential for growth and learning may be right for the role.

Change and the Established Business Owner

Despite being established business owners, LNCs continue to face the need for change. Changes that an LNC might consider include taking on additional business, hiring employees, or offering additional services. These changes are generally solutions to problems that cause disruptions in business. Initially, the LNC might ignore a problem. As discussed earlier in this chapter, change theory states that unfreezing established behavior occurs only when a situation is so uncomfortable that an individual can no longer ignore it. Some LNCs, however, seek to manage change by implementing incremental change before a situation becomes disruptive to business.

An effective model for making incremental change is the plan–do–check–act cycle (PDCA), also known as the Deming cycle. The process generally starts with a problem that reflects a weakness in the business process. For example, a client might complain that report turn-around time is too long. The LNC will examine current practices, generate alternatives, and select the change that will streamline the process. Using the PDCA model, the LNC would plan the change, perform the change, and check the results of the change. If the change is successful, the LNC would formalize policy to include the change. However, when the checking process reveals that the change does not meet expectations, the LNC starts the PDCA process again (Ishikawa 1985). The PDCA is an ongoing process of scanning the environment, relating information to operating norms, detecting significant deviations, and initiating corrective action. This helps the LNC adapt incrementally to a continuously changing environment.

One of the first questions faced by a business owner — to stay small or to expand — is a personal decision based on each unique situation. Although it is difficult to turn down work, expanding and hiring staff adds a whole new set of dynamics. The demands of hiring, training, and monitoring may expand potential, but they also add a significant burden to the business. In addition, small workgroups tend to be more fluid and responsive to change than larger groups. LNCs must consider hiring decisions very carefully. One business owner described an experience hiring part time employees, who left soon after being hired on the grounds that the work was demanding. The

employer reflected on the situation and decided to implement a more comprehensive orientation program and recruit employees with a work ethic consistent with the firm's.

Sometimes LNCs question whether they are making too many changes. Change can be very disruptive to the equilibrium of the business. It is important for the LNC to plan for change, but also to ask how much change is too much. Adding a new service every few weeks or changing procedures on a rapid basis creates stress. Although it is necessary to recognize the need for change in advance, some business owners find this to be difficult because they become too close to the business. In this scenario, it is helpful to retain a neutral business consultant to get a fresh perspective on the need for change.

Hiring an additional staff member may open up possibilities or may threaten the equilibrium of the workgroup. Finding individuals who are appropriate for the role is essential. The wrong match can have a detrimental effect on the productivity of all members of the workgroup. What kind of match is the right one? Nurses who are analytical and detail oriented are more likely to excel in the role. Qualities that impede performance of support staff as well as nurses in an LNC practice are:

- Not having basic spelling, grammar, and proofreading skills
- Not being computer literate
- Not being detail oriented
- Not being organized
- Having difficulty getting back on task when interrupted

Hiring nurses as LNCs requires careful consideration and planning. It is important to create a job description that explains the requirements and expectations of the role. Ask applicants to review the job description prior to the job interview. During the job interview, explain the job expectations in detail and listen attentively to the comments of the applicant. Once the applicant is hired, monitor performance using the elements of the job description. Offer frequent feedback to newly hired employees. Consider feedback to be an opportunity for dialogue and discussion about the expectations, conflict, and ambiguities of the role.

Hiring a nurse to work in the small LNC business is a big risk. Adding a nurse to a business that consists of the LNC owner and a secretary means hiring 33% of the staff. The nurse may walk away with clients, despite the most carefully composed contract with a noncompete clause. Another risk is hiring an incompetent LNC. The employee may have multiple absences that interrupt the flow of work.

It is important for the business owner to evaluate the risks associated with hiring new personnel and decide whether the risks are worth it. The

introduction of a newly hired LNC into a business may stimulate unanticipated reactions such as changes in office relationships, intraoffice competition, and demands for space and resources. A business practice can be thought of as a system composed of distinct parts that function together in an integrated whole. The business works well when all parts of the system are in a state of equilibrium. A change in the environment, however, can put the system into disequilibrium. Equilibrium can only be reestablished when all parts of the system adapt to the change in the environment.

Resistance to change presents significant challenge to LNCs. It is natural for staff members to question change. Questions from staff members are the first step towards accepting change. However, resistance to change can be covert or deferred. LNCs need to be aware of human reactions to change and develop strategies to handle them. An LNC who is a business owner may welcome change because it will improve business. An employee, however, may not be as highly motivated by the change because it might disrupt established routine.

A change agent anticipates change and takes responsibility for managing the process. LNCs act as change agents when they discuss change with staff members in a manner that is clear, compelling, and persuasive. It is particularly important to describe the need to change because this will help staff members go through the unfreezing process. LNCs must pay careful attention to their language when they discuss the need to change with staff members. Communication problems for individuals who work in different domains, such as law and medicine, may occur. Clear communication is important because people resist what they do not understand.

LNCs use participative decision-making and involve staff members in making decisions that change processes. If staff members are given an opportunity to participate in the decision to make a particular change, they will go through the unfreezing process sooner. Some LNCs discuss the change to identify the source of resistance and concern. Anonymous input would be helpful because this type of feedback is more likely to be given in a forthright manner. It is important for the LNC to listen to the staff members and pay attention to their verbal and nonverbal reactions. LNCs who are intrinsically motivated are likely to be totally focused on their own ideas, but this can cause others to disengage from the conversation. Listening shows staff members that they are an important part of the process.

Members of the staff who complain about change are likely to be representatives of a silent group. Some individuals will not voice their opinions due to concerns about repercussions from crossing someone in power. No one wants to tell the boss that an idea is off base, but sometimes that is just what the boss needs to hear. A discussion about a bad idea can be disappointing, but it can also lead to the discovery of a good idea. In listening to

others, LNCs suspend judgment and remain open to new ideas. An important part of interacting with others is to allow oneself to be influenced by compelling points and gain insight from others. Their perspectives can enrich the nature of the LNC's business.

It is hard for a business owner to have patience with the process of change because it takes time for people to adjust to and accept change. LNCs realize that it is important to slow down, accept the process, and educate people along the way. It might take more time than expected to gain overall acceptance of change, but it is worth it. Helping employees deal with change is directly related to the LNC's ability to listen and involve others in change. One business owner spoke of hiring an employee who voiced frustration with being asked to participate in making a decision. After the lengthy process was complete, the employee stated that she now understood the need for the analysis and appreciated being involved in the discussion.

Conclusion

Nurses who transition from clinical nurse to LNC face a variety of challenges, including the disorienting effect of change, stress, and strain from role ambiguity. In making a successful transition, nurses must acquire an array of new skills and behaviors. One of the most important new skills that the LNC develops is a thorough understanding of change theory and how to incorporate it into a dynamic practice. LNCs know that even if some plans fail, there are opportunities to learn by looking at what worked and what did not work. Nurses who understand change theory are in a better position to anticipate, direct, and manage change in pursuit of their professional goals as legal nurse consultants.

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Client Relationships 10

ROBERT MORRISON

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Introduction

Once the LNC has created a connection with a new or potential client, it is important to develop a strong, mutually beneficial relationship with that client. Although it is not necessary to have a well-developed partnership in order to read and summarize a medical record or prepare for deposition, having such a professional association with the source of that project provides the LNC many benefits over time. This chapter looks at the different types of relationships evident in business settings and contrasts the characteristics of short-term interactions with those of professional partnerships. Many different aspects of business as they relate to the growth and development of the working relationship are discussed.

The type and depth of the relationship determines how long the association lasts and how frequently the client and the LNC interact. Because such contact is required in order to work together, the quality of the partnership becomes the characteristic that marks the LNC's success over time. In contrast to the individual, unconnected transactions that take place between store-owners and customers, the consultant–client partnership requires a deeper level of association between the parties in order to thrive.

Many LNCs appear to maintain success without any effort at all. Their names are widely recognized; their reputations are secure. Their clients seek them out, rather than the other way around. They are always busy and never appear to have the time for extensive marketing or networking. One mistake that inexperienced LNCs make is to assume that they need only work on a few projects, get their name known in the legal community, and then sit back and wait for the business to come to them.

Even casual shoppers will admit to patronizing a store more often if they know people who work there or have been given quality service there before. Restaurants know this principle better than many other businesses. The image of the "regular" who is known by the staff because he frequently eats at a specific restaurant is not fiction. The restaurant's patrons are not there because they lack other places to eat. Even within categories such as types of food served, there are likely many different restaurants from which to choose. People tend to patronize restaurants that serve the food that they prefer, maintain a desired level of quality, and treat their customers well. Servers

and wait staff are taught early on that they should make an effort to recognize patrons that they have served previously. A brief greeting that shows the customers that they were recognized goes a long way toward securing those customers' business for the long term. This is the most important marketing secret that experienced, successful LNCs have learned. Department store patrons will shop according to a number of criteria: location, quality, price, choice of products, and so on.

The only relationship that exists between customers and the employees is that of the buyer vs. the seller. Neither party needs to form a deeper bond in order for the transaction to occur. In contrast, the consultant–client interaction involves more than a single transaction. Both parties share a number of important characteristics. The first part of this chapter takes a deeper look at how these characteristics affect the LNC's success.

The Advantages of Building Relationships

The successful LNC is able to establish and maintain productive, ongoing relationships with clients. The success of a consulting business depends on the regular, consistent flow of work over time. This work comes from new clients — particularly in the early stages of the business — as well as from existing clients. For any consultant, more effort and time is required to initiate a new relationship than to continue and maintain those already in place. Although it is important to continue to seek new sources of revenue, the value of the LNC's current and prior clients becomes clear when looked at in this context. It is imperative that the LNC keep established clients in addition to making new contacts to achieve long-term success.

Maintaining and nurturing professional relationships requires regular contact and association over time. The idea is to develop the relationship into a true partnership. It is important to realize that everything that happens with clients affects their perception of the consultant and the relationship. This can help the relationship grow or cause the client or the consultant to terminate it. Therefore, the idea of creating and maintaining a partnership is not one that can be disregarded after the client has signed the first contract.

This requires patience and can be frustrating for the LNC; however, creating a true partnership with clients has many advantages. Established clients are familiar with services that the LNC has to offer and have seen how those services add value to their practices. A client who is satisfied with the work done by an LNC is more likely to return to that consultant with future projects. The satisfied client is also more likely to refer the LNC to other potential clients directly or by suggesting other clients that the LNC may wish to contact. The truly satisfied client is also more likely to allow his name

to be used when the LNC is meeting with potential clients or in marketing materials such as brochures or Websites.

This is not to say that the quality and appearance of the finished product are unimportant, but rather that this work product should be viewed by the LNC relative to the ongoing partnership. The work product consists not only of the final written report but also of all of the personal contact with the client in the course of the project. Carucci and Tetenbaum (2000) point out that the final measure of value for the client is often the quality of the relationship that develops. This relationship will affect how the client views the LNC and values the LNC's work. These authors' research showed that, most often, the client was more likely to return to the consultant who created the best relationship with that client.

Just as no ready-to-follow formula exists for establishing and nurturing personal friendships, no single source of information exists on how to maintain and grow business partnerships. This section explores the different components of relationships in order to see how they affect the LNC's business success.

Long-Term vs. Short-Term Relationships

Carucci and Tetenbaum (2000, pp. 71–75) point out that a person's behavior in healthy, long-term relationships differs from those composed only of a series of transactions. They discuss seven characteristics of a long-term partnership and contrast those to the transactional relationship.

Maintaining Trust

Both partners must constantly perform *routine maintenance*. This means discussing aspects of the relationship that are going well as well as areas that may be hurting the partnership. Partners need to discuss sensitive issues, rather than avoid them, in order to build and maintain the trust of each other. This contrasts to the individual transaction, such as the purchase of a pair of shoes, in which no expected partnership follows the sale.

For the LNC, this may mean regular satisfaction surveys (Figure 10.1) given to clients. Use of surveys is advisable following the completion of a project. They give the LNC valuable feedback that allows the LNC to keep beneficial characteristics while discarding or refining those that appear detrimental. A survey also makes clients more aware of their opinions of the LNC, reinforcing the positive image that the nurse consultant worked hard to create and making it more likely that they will call that LNC in the future. A survey may also be beneficial for the relationship during the course of a

Client Satisfaction Survey

We thank you for the opportunity to work with you. In order to maintain your satisfaction, we ask for your responses to the following questions. We value you as a client and wish to work with you often. Your responses will allow us to analyze our work continuously and make sure that we are meeting your needs. Again, we thank you for the recent opportunity to work with you, and we hope to do so again soon.

1. How would you rate the knowledge and helpfulness of the expert you worked with?
(Poor) 1 2 3 4 5 (Excellent)
2. Our intent is to reduce your dependence on outside medical experts and lower your costs when such experts are needed. How would you rate us in this effort?
(Poor) 1 2 3 4 5 (Excellent)
3. How well do you feel that your investment in our services benefited you?
(Poor) 1 2 3 4 5 (Excellent)
4. Overall, how would you rate our services?
(Poor) 1 2 3 4 5 (Excellent)
5. Was the work performed in a timely manner and within all deadlines?
Yes _____No _____

Do you have any specific comments or suggestions to improve our services?

_____

_____

_____

Figure 10.1 Example of a Client Satisfaction Survey

particular project. Reinforcing the positives while changing negatives will improve the final rating for both parties.

Meeting the Needs of Both Partners

A single transaction is judged by its ability to meet the needs of the individual. A partnership must take both parties into account. If one partner consistently feels that his or her needs are not being met or are secondary to those of the other, then the relationship becomes less valuable for that partner. An example of this is the attorney who sends a steady stream of cases to the LNC, utilizing a significant percentage of the LNC's billable time. The attorney pays his bills only after 90 days and several phone calls from the LNC. This pattern is not fully meeting the needs of the LNC.

Each partner must actively pursue an enhanced understanding of the other in order to better assess that partner's needs. This is more than simply responding well to a request of the client. It is the ability to uncover and meet the needs of both partners that have not been expressed.

Completing Tasks While Strengthening the Relationship

A transaction is a single event or a series of unrelated events. A partnership consists of numerous individual tasks, all related to the mutual needs of the

partners. Each task is an opportunity to strengthen the relationship, thus making the next task easier and more successful. This includes many of the basic items looked for in a typical work environment: speaking with candor; praising genuine talent; trying to find ways to ease stress in the other partner during difficult time; and celebrating successful outcomes. Making the work easier and more pleasant will only improve each partner's opinion of the other. One example of this is the attorney who is careful to explain which features of a report are the most important so that the LNC knows to consistently include them.

Mutual Ownership of Outcomes

A single transaction creates little or no ownership of the outcome for either party. There is no common goal. Both parties will be affected by the outcome in a long-term partnership. This allows both partners to focus on the tasks that best suit their expertise and strengths, fitting the results together to achieve a mutual goal. Neither partner has to keep watch over the other to make sure that he is doing his share of the work. For example, the plaintiff's attorney will increase the LNC's satisfaction by periodically advising the LNC about which cases have settled and how the LNC's work product was instrumental in the achievement of the outcome.

Deep Personal Investment

Transactions are superficial events. A partnership requires more than shallow, rote interactions. In order for the relationship to endure difficult times, both partners must be able to disclose personal emotions and thoughts. This allows both to better understand the other and also requires the determination to persevere when the relationship is having difficult times and it may be tempting to withdraw altogether. Trust develops over time. The LNC also learns to differentiate between sharing personal information and setting boundaries on the relationship. A close business relationship that evolves into a close personal one can complicate purely business decisions. For example, the LNC who allows an attorney to accumulate large numbers of unpaid invoices may have allowed a personal relationship to interfere with cash flow.

Commitment to the Other Partner's Development

Commitment requires both partners to take satisfaction from watching the other grow and learn. Contrary to the individual transaction, both partners need to feel a sense of development in order for the partnership to continue. As this happens, future goals and desires are easier to reach. The concept of one-upmanship breaks a partnership down. Mutual growth and development

build it up. For example, even as the LNC teaches the attorney about medicine, the attorney teaches the LNC about the law.

Building Common Ground through Shared Values

In simple terms, this means that each partner needs to find reasons to stay connected with the other over time. This usually stems from a mutual attraction based on ideals, beliefs, and aspirations, as well as mutual trust and dependence. Discovering these commonalities takes time, but the time is well spent because it helps improve the outcome for both partners. The list of individual characteristics that attract partners is endless. In identifying these characteristics, the LNC is in a better position to create value for the other partner. These identified shared values provide the anchor for any long-term relationship. An example is the LNC and attorney learning that they participate in the same youth mentoring program. This helps each partner feel more comfortable about the other by illustrating similar personal priorities.

The common thread in all of these points is not only letting the other partner shine, but also helping him or her to do so. Being interested in the well-being of the other partner is what differentiates the long-term partnership from the individual transactional relationship and is the essence of the consultant's role in the relationship. This may mean stepping back and letting the client take the limelight in order to promote this concept. Over time, one would hope that clients will realize how much of their success depended on the efforts of the LNC. Thus, the value of the LNC's services continues to grow.

These seven characteristics of partnerships make up what this writer calls the Carucci effect. Throughout this chapter, the different sections should be considered in the context of this effect. The growth and development of their relationships dictates consultants' long-term successes.

It cannot be stressed enough that the development of a partnership takes time and effort. The LNC must always be aware of performance and the client's perception of the LNC's usefulness. Those are the only outcome criteria that the client will have at the onset of the relationship. Firmly establishing both criteria will allow the relationship to grow into the future and allow both parties to see the need to develop the partnership.

Working with Attorneys

Learn Setting and Challenges

Often, the LNC will be working for attorney clients. To assess the needs and desires of the client, the LNC must gain an understanding of that client's

setting and practice role. This can vary from the solo practitioner with a small private office to an almost infinite number of attorneys in one or more office locations. The client may be insurance or corporate based, in-house or outside counsel. Any of these clients may function as counsel to the plaintiff or the defense. Taking the time to identify the client's practice setting will make it easier to identify the needs and expectations of the client and contribute to the development of the Carucci effect.

Each type of setting will have its challenges. The LNC should remember that the term *client* refers to more than just a single person. The LNC's client is the attorney. This person is working to meet the needs of partners, support staff, and the client. The problems and needs that the LNC is hired to address will come from all of these. As Carucci states, one of the characteristics of a partnership is helping the other partner achieve his or her goals; the LNC must support all of the people involved in the case while ensuring that his or her financial needs are being met by the attorney client.

In any situation, the LNC should have a primary contact — most often the attorney retained by the end client. The attorney's practice setting and position in the organization will affect the LNC. A sole practitioner has more autonomy than a junior partner or associate in a larger firm and can expediently make decisions. Attorneys in a larger firm must obtain approval for decisions from senior members. In-house corporate counsel will have much more complex chains of command than those who work independently. Regardless of the internal command structure, the attorney must answer ultimately to the client (the plaintiff or the defendant) and may need to obtain approval before committing resources or time to the task. This command structure is often more complex when working with defense counsel because the clients will often be corporations or insurance companies that have their chains of command as well.

The LNC needs to keep this structure in mind when communicating or negotiating with the attorney. Even after the LNC and attorney have agreed on the problems and plans, the LNC may need to wait for further approval before starting the project. This is also important when the LNC wants to bring in additional resources or experts. The LNC must make sure that these actions are approved and the financial resources are secured to prevent being held responsible for unexpected costs.

Billing and payment timelines will vary from setting to setting. Sole practitioners have fewer administrative details to arrange in order to process invoices, but they also have fewer resources and may require more time to complete payment. These details should be worked out prior to starting any project or working relationship in order to avoid misunderstandings that can interfere with the relationship.

The LNC becomes familiar with the phrase "hurry up and wait" in any legal setting. The attorney is responsible for many cases at any point in time. Even when the client has indicated that the need for the LNC's work is urgent, it may be some time before that client responds to the work. Once the attorney has met a deadline, he or she will need to shift focus to other cases. The LNC should work to understand the client's setting and customary response times in order to fit into the client's needs with the minimum of stress.

Meet the Client's Expectations

Meeting expectations involves more than simply providing the expected final report. A significant part of building common ground is meeting the client's expectations regarding the LNC's appearance, practices, and work ethic, as well as manner of behavior. Cohen (2001) discusses two general areas — appearance and behavior — and identifying the client's specific expectations and needs. Appearance and behavior are extremely important. Cohen refers to this as "mirroring and matching" (p. 76). People are naturally more drawn to people who appear to be similar. This is quite often expressed in appearance and behavior.

Cohen stresses that the consultant should match the client and setting when choosing what to wear and how to act. The first meeting with the client requires that the LNC be neatly dressed in standard business attire. This meeting should also be used to assess the client's setting and habits and to decide how to adjust to them. He gives two rules for the consultant with regard to dress: be as neat as possible and try to look as much as possible like the client (p. 75). If the client operates in a formal environment, the LNC's dress should be similarly formal. However, if the client's setting reflects less formal attire, the LNC should make the effort to dress like the client. Attire does not accurately reflect skill, knowledge, or ability to contribute to the partnership. However, personal appearance does project a constant image. If the LNC's attire makes the client uncomfortable or draws unfavorable review, it can distract both parties, as the following example shows:

> Two attorneys from a midwestern state traveled to take the deposition of a northeastern nurse expert. The attorneys wore casual clothes, with holes in their jeans, but the nurse expert wore her best suede business suit. The difference in dress puzzled the nurse, so she later queried her client about it. She learned that attorneys from that state often "dress down" when traveling out of town, yet routinely wear suits to the office. This provided the nurse with a valuable insight about the differences in cultures.

The second aspect to mirroring and matching, according to Cohen, is in behavior. Specifically, he discusses voice, speech tempo, word usage, posture, and movements (p. 76). People who have a long-standing relationship tend to look and act similarly. Thus, the client is more likely to see the relationship as long-standing if the consultant is looking and acting similarly. If the client is standing, the LNC should stand as well. If the client communicates in short, quick sentences, the LNC should gradually adopt this style. On the other hand, if the client's manner of conversation is slower and more detailed, the LNC should follow this lead. The client may carry on all conversations sitting at a desk or table referring to information set out there. In this situation, the LNC should do likewise. If the client adopts a particular posture during conversation, the LNC should follow this lead. The LNC should never mimic the client in an obvious way, but should follow the client gradually during the course of conversation.

The goal for the LNC is to look and act as if he or she is a natural and expected part of the environment. The client will be more likely to see the consultant as an equal partner if appearance and behavior reflects client's own. It is an important aspect of building common ground in order to foster a long-term partnership.

Communicate with Clients according to Their Expectations

Telephone Communication

Remembering the lessons learned in mirroring and matching, the LNC should work to adopt telephone habits and styles that match the client. Although the telephone may be the quickest and easiest means of communication, it is also the most intrusive. The LNC should remember that, even though this is the best time for the LNC to discuss an issue, it may not be the best time for the client. The attorney may have another client in the office, be attending a meeting, or be working on a crucial matter for another case.

With the passage of time comes an understanding of the client's work habits and office norms. It is crucial for the LNC to identify times of the day or days of the week that are best for telephone calls. Set times for conferences or meetings may make a specific time of day difficult for the LNC to reach the client. Learning these norms is time well spent by the LNC who does not want to annoy the client repeatedly by calling at inconvenient times. A simple way to address this is to ask at the beginning of a call, "Did I catch you at a bad time?"

Many, if not most, attorneys do not answer their phones directly in response to an outside call. The LNC is most likely to reach the legal assistant or administrative assistant. This should not be construed as a client's avoidance tactic. The attorney will rely on the office staff to help screen the incoming calls, determine their purpose, and help maintain work flow by

"triaging" the calls to make sure that all needs are addressed in the course of the day. As discussed later in this chapter, building a relationship with the office staff can greatly improve the LNC's ability to work closely with the client.

The LNC should adopt that client's usual manners and practices when communicating by telephone. Not everyone prefers long phone calls, and the worst thing that the LNC can do is to appear as rambling and slow when the client is trying to bring the call to an end. On the other hand, if the client prefers to mix casual conversation with the transfer of information, the LNC can be seen as curt and disinterested by trying to keep the conversation focused only on business.

Background noise should be kept to a minimum. The noise generated by the client's office will vary according to office location, the number of support staff present, and the layout of the office. Clients are accustomed to the noise in their offices and often do not notice it. Background noise coming from the LNC's environment is new to the client and is likely to be distracting. Because many LNCs' work is based in their homes, this can create unexpected problems. It creates an unprofessional impression if the client is distracted by the sounds of children or family members talking or of television or radio playing, for example. Even though the LNC is working diligently on the client's case, many people associate work with the office setting and see the home-based worker as less industrious.

The client should have a dependable, professional means of contacting the consultant. The LNC is advised to maintain telephone numbers and mail/e-mail addresses separately from home address and phone numbers. Unless the client is also home based, matching his setting requires a business-like point of contact. This should include fax numbers that are separate and distinct from the LNC's telephone. The harder it is for the client to communicate with the LNC, the less likely he or she is to try. If it is necessary to call ahead and notify the LNC that a fax is coming, the client is less likely to do so.

Correspondence

It is generally expected that all business communication be in writing to avoid misunderstanding and to create a record of the communication so that points made are not forgotten. For the LNC, the means of communication is determined by the client's preferences and customary work habits.

The client's customary writing style should be adopted by the LNC. As with telephone communication, the client will have a preferred method of writing. Letters that are too short or are seen as rambling and long will distract the client and inhibit effective communication of information and ideas. Mirror and match the client in order to create the feeling of partnership.

Telephone and face-to-face conversations should be summarized in writing by the LNC as soon as possible, to ensure completeness and accuracy. This summary should be sent to the client in letter format and be stored by the LNC as well. This makes the client more confident in the LNC and gives the opportunity to correct any miscommunication that may have occurred.

Meet Their Needs

Cohen (2001, p. 77) lists seven essential questions that the consultant must ask in order to understand the client's needs and expectations. For the LNC, the first three questions apply the most when working with the attorney client, so they are discussed here. Although it may seem that it is understood that the LNC should meet the client's needs, many LNCs do not adequately prepare to do this. By fully addressing the client's problems and needs, the LNC establishes himself or herself as an essential part of the partnership that is being created.

What Problem Needs Solving?

Regardless of the setting or the type of case, the client has problems or questions that need to be addressed. The LNC should question why the client is seeking assistance. Some clients are able to verbalize their situations and needs very accurately. Others may only have a vague understanding of the situation and need some assistance to identify the problems to be solved. The client who is unfamiliar with the LNC's role may also have trouble stating the exact problems to be addressed. By listening carefully and exploring the client's statements, the LNC can help identify the specific problems at hand.

The Needs of the Client

Determine the overall objectives and effects as well as specific tasks that are requested in order to meet those objectives or create the effects. It is important that the LNC listen carefully to understand exactly what the client is asking for. At this point, the LNC should be listening more than talking. The LNC who is too quick to launch into plans or ideas will often miss the client's real desires and needs. It does not benefit the partnership for the LNC to spend time doing tasks that are being done by others or that do not fully address the client's specific problems.

How to Know Whether Objectives Have Been Met

For the LNC, achieving goals means creating a nursing "care plan" that includes all steps of the nursing process. When developing a care plan, the nurse must always establish the outcome criteria in order to evaluate the effectiveness of the interventions. These criteria should always be restated to

the client by the LNC so that both are aware of the desired outcome; they should be stated in writing by the LNC. It is impossible to evaluate the effectiveness of the work if the LNC begins a project with only a list of tasks or vague expectations of outcome. This will also prevent the partners from planning their next step in the process and results in an end of the relationship whenever the tasks are completed. Assuming that the LNC finds the relationship to be working, he or she should always be preparing for the future in order to maintain the working partnership.

Morrison's Big Three

The LNC should always keep three rules in mind: be consistent, organized, and timely. Respond promptly to requests for information or activity. Telephone messages should be returned the same business day, if possible. If the issue requires additional time, the LNC should return the message to let the client know that he or she is working on it and give a realistic timeline for completion. This also applies to e-mail. The client needs to know that this message has been received, that it is important to the LNC, and that the LNC is actively working on the request. Attorneys handle many different cases, just as the LNC does. They will understand that the LNC needs time to complete the response and will be reassured that their partner is working on the matter.

The LNC should be organized and prepared when talking or writing to the client. All information needed should be close at hand, clearly visible, and easy to read. An outline can be written to ensure that no points are missed. If the LNC is stumbling through the information, frequently pausing or backtracking or missing significant points, the client becomes distracted and communication is less effective. If the LNC is consistent in the timeliness and thoroughness of the response, communication is improved and the client feels more confident in the working partnership.

The Relationship with the Attorney

Maintain the Purpose of the Partnership

The partnership exists to provide benefit to both partners. The LNC should remember that the attorney is running a business. The case that involves the LNC is one aspect of that business. Each case that the attorney handles has needs and expectations that affect the business. In addition, cases and their respective clients are just one aspect of the attorney's business. Administrative, legal, financial, and personal needs place demands on the attorney's time and attention.

The LNC provides attorneys with something that they do not already have and assists with one small part of that business. The LNC's work may

have the effect of bringing in resources that attorneys would not have found on their own; helping attorneys anticipate problems or pitfalls that they may encounter; or saving time by performing tasks so that the in-house staff may focus on other, more pressing needs. The LNC should always keep the reasons why the attorney retained him or her in mind. In this way, the nurse always provides a positive return on the attorney's investment. A solid return will make the client more willing to retain the LNC in the future, thus perpetuating the partnership to the LNC's and the attorney's mutual advantage.

Learn What They Do and of the Cases That They Prefer

Most attorneys will have specific areas of law with which they feel most comfortable. This is important to the LNC for three reasons. It is counterproductive for the LNC to promote services and resources that are unlikely to help the client. Both partners must benefit in order for a partnership to result. The LNC needs to bring in resources that promote the work of the client. Learning what type of cases the client prefers also helps the LNC identify potential areas of weakness in the client's resources. For example, if the attorney likes working with personal injury cases but does not have strong resources with insurance or case management experience, the LNC can emphasize his or her background in these areas. This gives the client a reason to retain the LNC: to increase resources.

Identifying the client's preferences will allow the LNC to anticipate future needs and locate the resources needed to address those needs in advance. In the preceding example, the LNC can begin to develop a strong network among trauma physicians and surgeons as well as rehab nurses and case managers in anticipation of questions or tasks that would require this type of assistance. Being able to solve problems quickly creates a stronger bond between the partners and increases their need to maintain the partnership.

Learn Their Professional Habits and Preferences

Identifying habits and preferences covers several areas. The LNC should know how the client wants the work presented. For example, should the case file be returned in a binder with reports and contents on top? Should regular progress reports be created during the review process or only related to the final product? The LNC should know exactly what the client wants in order to avoid spending time and effort that is not needed.

The LNC should identify the client's usual response time to questions or contacts, as well as the client's preferred method of contact. This benefits the LNC in three ways:

- The LNC is always using the client's preferred method of contact in order to facilitate communication. The basic rule is to give the client

what is expected in the way in which it is expected and when it is expected.

- The LNC knows when a response time is unusual for that particular client. The nurse wants to make sure that the contact is not forgotten, but does not want to annoy the client by constantly asking for a response that the client is still working to provide.
- Knowing the usual method and timing lets the LNC know when something is out of the ordinary. The client's tone of voice, manner of speaking, and method of contact can be a signal to the LNC that the LNC or someone else is problematic.

The LNC may want to make a database of characteristics for each client in order to keep track.

Learn Their Personal Habits and Priorities

The LNC should identify the client's personal beliefs and preferences. Some clients prefer to maintain a business relationship that does not include exchanging personal information or beliefs. Contrary to being cold or aloof, these clients strongly separate work from their professional lives. Others may simply require more time to feel comfortable giving personal information to others. The LNC should work to maintain the level of personal involvement that is comfortable to the client. Identifying personal beliefs and priorities will allow the LNC to minimize schedule conflicts by keeping up to date on the client's family activities and avoiding times reserved for nonwork activities. This also lets the LNC ask about events that are important to clients, thus showing interest in them personally.

Relationships with the Staff

The LNC should identify support staff and assistants with whom the client works in order to build a solid working relationship with them as well. As stated before, the term *client* includes all those with whom the attorney works in the course of a day. The best person to call with a question or follow-up may be the legal assistant or paralegal rather than the attorney. The ability to work well with the support staff increases the value of the LNC for the attorney and improves the flow of work in the office.

Staff members can be the LNC's closest allies in the attorney's office, helping with problems or questions; gaining access to the attorney; and helping the LNC understand the best times to make contact. They can also be the biggest obstacle that the LNC faces if they perceive the nurse to be a threat to their traditional roles or an interference with the work flow. The successful LNC will remember that staff members are fellow professionals,

not rivals or obstacles. For example, one way to include everyone is to select holiday gifts that the whole office can enjoy.

The Nursing Process for the LNC

Successful consulting requires a systematic approach. The LNC must first assess the situation and identify the problems to be addressed and the resources needed, including those already in place. The nursing diagnosis is a statement of the client's specific needs and directions. Then the LNC and the client must create a detailed plan that addresses those needs, including specific outcome criteria and expectations. The intervention phase involves putting the plan into effect, using the defined outcome criteria to guide the actions. Finally, the LNC and the client must be able to evaluate the effectiveness of the intervention and determine what actions, if any, need to be taken in order to complete the task. Documenting the required outcome criteria allows the evaluation to be clear and objective.

Avoiding Becoming a Rescuer

Unfortunately, many nurses tend to be rescuers by nature and are reinforced by training. Although this benefits the client, it does not provide a long-term benefit to the LNC. In order for a true partnership to develop, both parties need to feel that the relationship is beneficial. Falling into business habits that promote the "rescuer" label is surprisingly easy. The LNC focused on long-term success needs to be aware of this potential problem in order to avoid it.

The Patient Client vs. the Attorney Partner

Self-Sufficiency

Perhaps the most significant difference between the clinical client and the attorney partner is the respective level of self-sufficiency. Hospital or clinic patients seek the help of the healthcare system due to problems that they are unable to solve. The LNC needs to realize that attorney partners are able to provide for their own needs. They merely seek assistance with specific aspects of the situation so that they may better deal with others or so that the specific project may be completed more quickly. By approaching the situation systematically and using the process outlined previously, the LNC may avoid the temptation to take on responsibilities outside the professional realm.

Level of Independence

Independence goes hand in hand with self-sufficiency. The attorney partner does not depend on the LNC to provide for total needs. The degree of

dependence seen in the typical clinical client will vary. However, injury or illness tends to make the clinical client more dependent in other areas of life as well. The LNC should realize that continuously seeking to provide for needs other than the specific legal nursing issues creates codependence. The nurse gradually assumes more responsibility for the client until it becomes obvious that the nurse has become a "dumping ground" for many problems outside the realm of the LNC.

Needs and Goals

The goals of the attorney client will be quite different from the needs and goals of the clinical client. The clinical client may only be focused on specific physiological problems, working on one small measure of progress at a time. Attorney clients are not focused on healthcare needs, but rather the legal needs of their clients. The nurse will assist the client to reach his ultimate goals in both situations. It is important to remember the difference between the two types of clients in order to avoid assuming unrelated worries and responsibilities.

The LNC should approach each client bearing in mind the characteristics of a partnership as discussed earlier in this chapter. The purpose of a partnership is to add value to both partners, providing strengths and assets that they did not previously have, and to promote the status and development of the other partner. "A true partnership is an interdependency, an exchange between equals" (Carucci and Tetenbaum 2000, p. 69). Before taking on any responsibility, the LNC should consider whether this meets the criteria that define a partnership. Perhaps this is the easiest way to avoid situations that can change the LNC from an equal partner to a rescuer.

Giving it Away

For the LNC, the temptation is great to demonstrate abilities and value to the client by being "too helpful." This is particularly true when dealing with new clients. Eager to show what they know and how they can help, LNCs may be too quick to provide multiple suggestions or opinions without taking the time to establish the beginning stages of a partnership. Because one characteristic of a partnership is that it promotes the value and development of the other partner, taking the time to establish this relationship can help the LNC avoid this situation by giving the attorney reasons to solicit and accept assistance only within the context of the nurse consultant's professional capacity.

Providing too many suggestions before fully understanding the situation undermines the LNC's credibility in two ways. First, the LNC probably does not have enough information to provide educated and accurate assistance. When this becomes a pattern, the attorney client sees the LNC's help as less

valuable and dependable, and the partnership begins to suffer. Second, if the LNC is able to provide quick, easy solutions to the attorney's problems, the attorney has less reason to retain the nurse in an official capacity. The LNC should always remember that attorneys must have a reason to retain him or her before the partnership can form. If they get all the help that they need in the initial interview, it is not necessary to retain a consultant. This type of mistake can be seen when an LNC offers extensive advice to an attorney who posts a question or scenario on a listserv. The inexperienced LNC may rush to the question without sufficient understanding of the problem. This free advice may not be accurate or effective in winning a client.

This type of mistake also includes giving away the sources of the LNC's information and research assistance. The LNC who is too eager to prove the extent of professional resources may be tempted to provide the source of this information to a client so that the attorney is impressed with the breadth of resources at the LNC's fingertips. However, if the attorney knows where the LNC is getting all of this information, those sources are then open to the attorney. The LNC has served as the gateway to the information and thus is no longer useful. It is possible to discuss the different types of resources open to the LNC without providing direct access to them. This allows the potential client to appreciate the LNC's ability to assist and requires the client to work with the LNC in order to tap into those resources. This is one reason why the LNC should hesitate before allowing the attorney to deal directly with the LNC's nontestifying subcontractors.

This is not to say that the LNC should never provide any conversation or assistance without prepayment by the client. After all, this is the reason that the LNC is there in the first place. A single suggestion or idea given during an initial interview or brainstorming session can promote the LNC's abilities without compromising sources. However, a pattern of this type of behavior may result in the attorney simply contacting the LNC for free advice without the need for a working partnership.

Becoming a Dumping Ground

It is likely that the LNC's first project with a new client — or even the first few — may begin in the middle of the legal case. Once this client sees the value of involving the LNC, this new client will often seek assistance on cases upon which work has been in progress for some time. This means that the LNC will be working with shorter deadlines than would be preferable or that missing information may need to be located quickly in order to complete the assignment. For this reason, it is advisable for the LNC to charge higher fees for *rush* jobs.

Although it may demonstrate the LNC's value to the attorney to show the ability to complete difficult tasks under less than ideal circumstances, the

LNC must be aware of patterns that may form. In order to provide the best work product for the client, the LNC must have sufficient time to gather all of the relevant data, thoroughly research the issues, and provide clear and accurate analysis. If the "rush" situation becomes a pattern, then the quality of the LNC's work will suffer and the partnership will not be able to develop.

Put it in Writing — How to Avoid the Rescuer Role

Intake Forms

One way to avoid jumping into situations unprepared is to make sure that new cases are summarized on a standard form that outlines all of the relevant data on the case. This helps the LNC avoid starting projects without adequate information by prompting the asking of specific questions about each case. Such forms may be found in many different books, journal articles, and Websites. The new consultant may also want to ask other, more experienced LNCs for ideas. The important thing is to make sure that all of the information needed to start a project is made available. This makes the client aware that the LNC will not simply jump into an assignment without a careful, planned approach. The client is then less likely to see the LNC as someone who will take on undesirable responsibilities.

Written Contracts

This section is not meant to provide assistance with creating a binding contract form for the LNC. There are advantages to working under clear, written guidelines and limitations in order to avoid the role of the rescuer. The LNC should have a signed contract with the client for each project. In fact, many liability insurers require this.

The contract should state the work to be done, applicable deadlines, fee schedules, and the terms of payment. The contract should also clearly state that all outside experts or contractors are to be retained and paid by the client. It should bind the client to payment terms if the LNC is to provide payment to the experts or subcontractors. Without this protection, the LNC may find that he or she is responsible for outside expert charges and expenses that far exceed the fees paid by the attorney.

Contracts may be fee-for-service or flat-fee arrangements. Both have advantages and the LNC should discuss this with a trusted attorney before putting a contract into force. The flat-fee approach allows the LNC to provide a larger scope of services to the client over a longer period without enacting a separate contract for each project. This is particularly true when the client wishes to have the LNC available for many different projects or is contracting for a set number of hours during a specific period. Fee-for-service contracts that pay the LNC per hour of work help assure that all of the LNC's work is

paid for even if the project takes longer than originally anticipated. It also protects the LNC against the client who terminates the contract early and then refuses to pay the set fee because the LNC did not complete the work.

Avoiding Abuse

The LNC should recognize that accepting new clients involves a choice. Some clients, no matter how much work is promised, are simply too high maintenance. The client who is demanding, abusive, irritable, hostile, unreasonable, or unwilling to pay for services is undesirable. The LNC should carefully consider the costs of working with such a client. Setting limits on behavior or simply avoiding this client may go far toward keeping the LNC calm. The attorney who displays this type of behavior may systematically eliminate legal vendors willing to work with him.

Although it is unusual to encounter these types of clients, they do exist and they can create enormous trouble for the LNC's business and reputation. It is better to have a smaller number of clients who appreciate the LNC than to have one erratic client who provides a lot of work — but at a high price for the LNC, as the next section illustrates.

Identifying the Undesirable Client

Unfortunately, unethical and undesirable members are present in any profession. LNCs are especially vulnerable to this problem because they may be constantly seeking out new clients to add to their existing base. This means that LNCs will occasionally deal with new clients unknown to them for whom no references are available.

It must be remembered that these clients make up a small minority of the legal profession. However, because one such client can be costly, and many LNCs do not have the reserves to make up the losses incurred, consultants must make every attempt to identify clients that may fall into this category. Unfortunately, no foolproof way to identify the undesirable client exists. LNCs must trust their judgment when working with clients in order to avoid a costly, potentially devastating financial or legal problem.

Clients may be undesirable for many reasons. Some examples include:

- *Dangling carrots*. This client creates the impression or states outright that he will send many projects to the LNC. As such, he is consistently trying to avoid paying retainers, asking the LNC to wait for payment until all of the projects are completed or the case is settled; asking for free services for which the LNC would normally charge (i.e., expert

witness location for unrelated cases); or asking for discounts and write-offs.

- *Avoiding retainers*. This client insists that the LNC work without a retainer, which is part of the fee paid up-front by the client. Most attorneys require a retainer from their clients. This helps cover initial costs, such as LNC review, and protects the attorney against clients who do not pay the final legal fees. This practice is also good for the LNC; it is not a good idea to forgo this retainer because the client may then expect this pattern in the future.
- *Balking at contract terms that include due dates and late fees*. The fees paid to the LNC should always be contracted from the attorney — not from the attorney's clients — and should be due within an acceptable length of time from the date of invoice without being contingent upon payments made to the attorney by the end client. Most contracts call for payment to be due within 2 to 4 weeks of the invoice date. If the attorney insists that the LNC's fees be paid only after his client has paid him, this is a warning to the LNC. Such fees may go unpaid, with the attorney claiming that he has not been paid by the client for that work.
- *Not wanting to pay for expert witness location fees*. The client may not want to pay this fee unless the expert accepts the case and finds liability. The LNC consulting expert should be compensated for time and effort regardless of the outcome of the case.
- *Asking the LNC to limit information*. This may come as a request to leave potentially damaging information out of a report or to *shape* the truth to fit the attorney's claim. The LNC is an objective expert and should be concerned with making accurate and complete assessments.
- *Pleading financial difficulties*. The financial state of the attorney or the firm is not generally discussed with the LNC. Bringing such a topic into the discussion should warn that the LNC could face difficulty collecting fees.
- *Consultant shopping*. Like a doctor shopper, this type of client has worked with a lot of LNCs or other consultants, perhaps even changing consultants during the course of the case. This should signal that the client is shopping for opinions that agree with his or that he is not paying the fees and is losing consultants. The LNC is likely to face difficulty with this client.
- *Unethical behavior*. This client will often talk proudly of conduct that achieved results, but that may not be ethical. One LNC, for example, was talking with a new attorney client who was trying to find software that would allow him to view hospital-generated computer diagnostic

images on his office computer. He bragged to the LNC that he had visited the hospital's radiology department dressed and acting like a physician looking for radiology reports. A technician, believing him to be a doctor, gave him the Internet address and access codes to download the software to his office PC. The attorney was greatly amused that the technician had given valuable and copyright-protected software to an attorney who was suing the hospital. The LNC, however, was more concerned with the ethical issues. Some time later the LNC was terminated by the client and was left with hundreds of dollars in unpaid invoices.

- *Insisting that the LNC work on a contingency basis*. This is never permissible for the LNC. The work of the consulting or testifying expert is supposed to be objective and unbiased. An LNC who has a financial interest in the outcome of the case cannot be completely objective. The same is true for the LNC who bases the fee on a percentage of the damages or awards. The LNC should not stand to gain or lose based on the outcome of the legal claim.

These are only a few examples of undesirable clients that the LNC may encounter. It may be inevitable that LNCs will encounter one or more of these clients, especially those who work in the field full-time. The LNC is well advised to use senses and instincts when dealing with the clients as well as with the medical records. Many of the pitfalls that unethical clients create can be avoided by paying careful attention to the cues given by the attorney.

Ways to Identify the Undesirable Client

The Initial Interview

This all-important meeting is more than just the LNC trying to land a new project or secure a new client. A wealth of information is available to both parties during this meeting, and the astute consultant will be alert to all of it. For this reason, the face-to-face format is preferable to e-mail or conference call. Body language is important, and the LNC gets a chance to observe the office staff as they work. LNCs should also use this as an opportunity to observe the office, looking for such things as threadbare carpets, dirty and/or disorganized work spaces, or disinterested staff.

During this meeting, the LNC needs several questions answered with regard to identifying undesirability in the client. How often has he worked with LNCs in the past? What is his opinion of those LNCs? How many of them have continued to work with the attorney after their first project? If the attorney is overly negative in his description of prior LNCs or it appears that LNCs do not return to the attorney for future projects, there is probably a reason. One potential client told an LNC that he was unhappy with the

expert found by another LNC. The attorney stated that he had considered suing the LNC until he discovered that she had no insurance. The LNC hearing this story took this as a warning sign regarding the desirability of this attorney as a client and gave him a wide berth.

The client should be willing to work with the LNC according to the terms of the LNC's contract. It is not wrong for the attorney to try to negotiate specific clauses or terms, but if he insists on challenging many or all of the contract's provisions, the LNC should reevaluate the desire to work with this client. The terms of the contract protect the LNC and help preserve the partnership by avoiding misunderstanding. The LNC should not be intimidated into giving up these protections.

The LNC should be extremely careful with exclusive contracts. It may be that the LNC and attorney are happy working together and wish to enter into such a contract. This can assure the attorney that the LNC will always be available, and the LNC achieves a steady, reliable source of income. However, an LNC tied to an unscrupulous client can be unable to accept projects from other attorneys while the exclusive contract is in force. The LNC may also be bound to working with an undesirable attorney. Likewise, the LNC should not become too dependent on a single attorney or firm for work. An unexpected change in the firm's practice, a change in the partnership of the firm, or other dramatic changes can leave the LNC with no work without warning.

References from Other Attorneys

References may be the LNC's best source of information, but they must be approached carefully. The best sources of information would be attorneys that the LNC knows personally or who are current or previous clients. LNCs' clients, as mentioned before, have a stake in keeping them in business. They may also be less inhibited in their responses if they are comfortable with the LNC. The LNC should never approach this as if trying to gossip. If the attorney feels that the nurse is seeking a rational, unbiased opinion to of an educated business decision, he or she is more likely to be forthcoming.

Professional Services

Perhaps the best known listing for the legal profession is the Martindale–Hubbell directory. This may be found in many libraries or on the Internet. In addition to listing professional practice areas and locations, many attorneys are rated by Martindale–Hubbell in the areas of legal ability and general ethical standards. This is not a definitive rating and is based on criteria developed and maintained by Martindale–Hubbell. Thus, the rating published in the directory may or may not agree with personal opinions of the LNC or other attorneys.

All attorneys must maintain licensure in their state of practice. Many of them are licensed in multiple states. Regulations and access will vary from state to state, so the LNC interested in learning more about a prospective client may wish to contact the state or local bar association.

The LNC may also consider contacting the local Better Business Bureau and the Chamber of Commerce. In keeping with their mission to promote and facilitate business and commerce in their area, these two agencies can be an excellent source of information regarding complaints or suits against businesses. They would, at the very least, be able to state whether the prospective client had any prior complaints lodged against him.

Other avenues open to LNCs will depend on the resources available to them. Prospective clients can be asked to provide references or may be willing to identify consultants and/or attorneys with whom they have worked in the past. As mentioned earlier in this chapter, many attorneys will list representative clients on marketing materials or Websites. If this is approached carefully and professionally, it should not cause the client to take offense. After all, the attorney may require this of the LNC.

Another way to learn more about unfamiliar attorneys is through old-fashioned research. Court records, law review journals, and newspapers will often yield a great deal of information. Many court records are searchable via the Internet; if not, libraries maintain many different reference materials. It is particularly useful to identify law school libraries within reach of the LNC. It is possible to learn a great deal about someone by reading articles or court documents that were written by, or about, him.

Taking Action

Undesirable clients are the hardest people that many LNCs will face, particularly for those new to the profession and without significant financial or business resources. Although this section is by no means intended to be a comprehensive resource on the subject, there are ways for LNCs to protect themselves against undesirable clients.

The best defense is always to take every precaution against this situation before it happens. The LNC should always be satisfied that all available information has been gathered about the attorney client and that the sources are credible. The LNC should have all of the criteria discussed earlier in this chapter clearly documented and understood by all involved. A difficult situation for the LNC is often created by unclear goals, poorly communicated expectations, and no documentation of the preceding. This leads all too easily to the no-win situation in which each party feels let down by the other.

If all of the criteria cannot be clearly defined and documented, LNCs must determine whether to pursue the client or project despite the risk. In the course of any business, some risk is inevitable. After all, the only way to

ensure that a problem will never occur is not to start in the profession at all. The amount of time that the LNC plans to devote to consulting and financial expectations will determine how many unfamiliar clients with whom it will be necessary to work. If the LNC is consulting on a very limited or part-time basis, it will be much easier to limit the client base to known attorneys or attorneys with strong references. The nurse who focuses on consulting on a full-time basis will find it necessary to contact a much wider population of potential clients in order to meet business expectations.

It may be that, despite all precautions, the LNC is in a situation in which the relationship with the attorney cannot be continued. The options in dealing with this situation will vary according to the LNC's preparation, as well as state and local laws. It cannot be stressed enough that the better the preparation is, the better the outcome will be. The LNC's consistency will also help.

Many LNCs are willing to work without a written contract. This is usually not an advisable thing for the nurse consultant to do. Although the protections that it provides may not be needed in the vast majority of situations, it may be that the one time that an LNC decides not to require a contract is the one time when conflicts or collection difficulties arise that put the LNC in a potentially devastating situation. This document is vitally important in many ways, and when an LNC is in an untenable situation, it may be the only way to survive. The contract should be created and approved by an attorney experienced in such matters. Among other necessary clauses is the one granting the LNC the right to terminate the agreement following written notification to the client. The contract should also clearly state that the LNC is entitled to payment for services up to the point of termination. Without such protection, it may be very difficult to recover fees for services that were provided to a client before the working relationship was terminated.

Another clause that may be inserted in the basic contract is one that gives the LNC the right to require payment for outstanding fees prior to releasing any reports or work products. In the event that a client has waited until the LNC finishes the work before terminating the contract, this gives the LNC some advantage. In order to get the report or information, the client must pay the LNC for the work that was done to produce it.

It is wise for the LNC to document all interactions and activity that take place in the course of a project or contract period. In addition to improving networking abilities and retaining facts for later use, it also helps the LNC show what was done, when, and when and how it was communicated to the client. If the consultant is in conflict with the client and needs to back up claims, a detailed and consistently maintained trail of communication and work can go a long way. It also supports the LNC's claims of the course of events after the conflict began.

Dealing with Complaints

Primarily, the LNC should strive to avoid situations or actions that are likely to generate complaints from clients. After all, the easiest complaints to deal with are the ones that are never voiced. Although it may not be possible to avoid all complaints, the LNC should strive to eliminate possible future complaints by learning from other consultants' mistakes as well as his or her own and then working to avoid similar situations.

Not What Was Expected

This is perhaps the most commonly voiced complaint by consultants and clients. This usually happens after the consultant and client have entered into a contract without having fully documented the client's needs and how the consultant is to address those needs. To avoid this situation, the LNC should always remember to explore the reasons that the client wants to retain him or her, outline the tasks and activities that will be done during the course of the project, and determine the outcome criteria. The LNC should know how and when the client wants to hear from him or her. The most important thing for the LNC to remember is to get everything in writing. Written contracts, meeting minutes, written summaries of phone calls, and retained e-mail messages are the LNCs most effective tools against this type of complaint.

Billing Issues

All issues related to billing should be clearly spelled out in the contract. In fairness to the client, the LNC must clearly state in advance

- Rates
- How fees are to be paid (flat fee or per hour)
- How the client will be invoiced
- The time allowed before late fees are applied
- Exactly how all fees are calculated

If the client has an expectation of total billing or sets a maximum rate to be paid, this should be documented as an addendum. The LNC should avoid giving specific estimates or off-the-cuff expectations of total billing until experienced enough to do so accurately. Such casual statements from the LNC may cause trouble later if the actual total is different.

Turn-Around Time

The LNC must always make sure to find out from the client when the project is to be completed. Initial screening or intake forms should include any deadlines or court dates that apply. These dates should be communicated back to the client in a letter to make sure that no misunderstandings are present.

Out of Touch

If the LNC calls or visits too often during the course of a project, the client may become annoyed or feel that the nurse is not self-confident enough to perform the work. However, if the client expects regular contact in order to gauge progress, the LNC should keep in touch. The LNC should apply the lessons earlier in this chapter to assess each client's preference in terms of regular contact.

Although this section cannot anticipate all potential client–consultant conflicts, these are examples of frequently voiced frustrations. Additionally, numerous texts and journal articles deal with the subject of customer and client service. LNCs should keep in mind what they would want from a consultant in any situation and then strive to provide just that.

Staying in Touch

Keeping in touch with clients has never been easier. Modern electronic technology has created many different means of communicating with people in virtually every setting. With so many options at their disposal, LNCs should adapt their communication technique to the specific client. Any means of communication has its pros and cons. This section looks at the different methods of networking with clients before and after the start of the working partnership.

The telephone is by far the easiest method of communication. However, it may be an interruption in a busy day, and the LNC may have a difficult time getting past the receptionist or legal assistant. The same is true for unannounced personal visits. This method is more effective if the LNC makes an appointment rather than showing up without one, but this may be difficult to arrange.

Correspondence includes postal and electronic mail. Both have advantages over phone calls and visits. Because correspondence does not require the client's immediate attention, it is less intrusive. It also provides the LNC with a "hard copy" of the information for future reference. However, postal mail is slower than other means of communication and may be opened by

the legal assistant or administrative assistant rather than the attorney. One of the assistant's responsibilities is to help the attorney manage time, so the letter may not be forwarded directly to the client. E-mail and instant message systems are easy and time saving, but only if the client is also comfortable using them.

The important thing is to develop skill in all methods of communication and networking. Any one method may be unavailable at a given time, and clients will vary in their personal preferences. The more methods in which the LNC is versed, the easier and more likely it is that the client will be contacted.

New Contacts — before the First Case

After the LNC has made the initial contact and the attorney has shown interest in the services available, regular contact is advised. The LNC's first concern should be that the attorney does not forget the initial meeting because this will make it less likely that the attorney will remember the LNC when work is available. Again, the LNC should keep all available means of communication in mind and try to use the method that most fits the attorney's usual habits.

Telephone follow-ups work well because the attorney is talking directly with the LNC. However, as stated before, phone calls are an interruption to the client. The LNC may decide to use this method on a monthly basis, judging that anything more frequent may become annoying to the attorney. Short letters or greeting cards can be sent more frequently because they do not require the attorney's immediate attention. Letters and cards are frequently opened initially by the attorney's support staff; thus, the LNC's name is kept in the minds of more people in the office. Professional newsletters also work well as a regular reminder. These have the advantage of providing attorneys with information that may assist them in their daily work and may give the potential client ideas for projects beyond plans made at the initial meeting. Newsletters are normally sent monthly or quarterly.

Active Clients

The LNC should establish the client's contact preferences at the onset of each project. Some attorneys will want to have regular progress reports to make sure that the LNC has what is necessary to complete the project and to assure themselves that the LNC is still actively working on the case. Others will prefer to see only the finished product or report. If the LNC needs additional information or records in order to complete a review or prepare for testimony, the attorney must be immediately informed of those needs.

If the client's preferences are established at the start, the client will be less likely to feel that the LNC is out of touch. This feeling can lead to the attorney retaining someone else in future cases, particularly if this is the first time working with the LNC. With the passage of time, the LNC will gain some autonomy and independence because both partners are aware of each other's habits and are less uncertain.

Between projects, the LNC needs to stay in touch with the client. If the LNC and attorney are involved in the same professional or community projects and events, then the LNC has an excellent tool for maintaining contact. If not, the LNC should look at the networking tools discussed previously in order to keep the attorney aware of the LNCs past performance and availability.

Holidays are good times to remember clients, whether or not they have retained the LNC during the year. Many offices will keep Christmas and New Year's cards they receive, often displaying them in the office during the holiday season. If the LNC knows the birthdays or other significant dates in the lives of the attorney or staff, these also make good times to send a card. Clients are likely to be impressed that the LNC has taken the time to learn these dates, and this positive impression serves the LNC well.

Expanding Services with the Existing Client

Advantages of Expanding with Current Clients

LNCs should always be aware of the needs of current clients and anticipate ways to expand their current partnership with clients. Marketing services to existing clients has several advantages. The current attorney client is already familiar with the LNC's services and the quality of the work. This means that the LNC spends less time educating the attorney about the usefulness of those services. For the clients, their impressions and opinions are more valuable than those of other attorneys. Their comfort level with the LNC is already established, lessening the degree of uncertainty that is present in a new relationship.

Once the LNC has established a working partnership with the attorney, communication and access increase. LNCs are less likely to be intercepted by the support staff if the staff is familiar with them. When the attorney is not available for immediate contact, the time spent waiting for a return contact is also decreased. Overall, the attorney's availability is much higher for the established LNC partner.

It takes less energy to maintain an existing partnership than to start a new one. Authors will often cite the example of airplanes and fuel consumption to illustrate this point. A plane uses the most fuel when taking off and

burns much less fuel once cruising altitude is reached. The same is true in personal or working partnerships. Once the bond has been established, it requires much less energy for both parties to maintain that connection. The LNC is able to achieve better results with less expense, and the attorney knows that assistance is available without looking for new sources.

Looking for Ways to Expand

Marketing is a constant, on-going process. The astute LNC will use every client contact as a way to increase knowledge of the client's needs. With time and practice, the LNC is able to insert into discussions conversation about other cases with which the client is involved. This offers the LNC the chance to provide insight on the case. After all, the attorney may have only thought of the LNC in terms of the current case and not made the connection to other cases.

Awareness of other cases currently involving the client gives the LNC the opportunity to anticipate resources and needs that the client may have in the future and thus gather those resources close to hand. As emphasized by Carucci, the ability to anticipate unspoken needs and quickly meet them is one of the hallmarks of the true partnership. If this happens just once, then the LNC has made a significant, lasting impression on the attorney.

The LNC should not be afraid to ask the attorney directly about other cases in which the LNC can help. A client who is happy with the LNC's previous efforts will be quite willing to explore other opportunities. Less experienced consultants may be hesitant to initiate this conversation, preferring to let the client do so. A reason often heard for this hesitation is that the LNC did not want to move too fast with a client. If the attorney has not mentioned other cases to the LNC, it may be that the consultant has simply not been associated with any other case. A simple inquiry from the LNC can help the attorney form that association with other medically related cases. The LNC should also look for opportunities to explain other services provided. An attorney who retains an LNC to locate an expert witness may be unaware that he or she can also prepare a timeline or perform literature reviews.

Expanding the Client Base through Direct Referrals

Advantages of Referrals from Clients

Successful LNCs never stop trying to reach new clients; however, they also work with existing clients to identify other attorneys who may be interested in their services. In terms of effort expended, marketing through direct client

referrals provides greater return for the LNC than cold calling or mailings. Current and previous clients know what the LNC brings to their practice. This makes them an excellent source of reassurance to other potential clients. This is the main reason that job applications require references from previous employers. Such contacts can provide a more accurate description of the consultant's work and value than someone can with no direct knowledge of the LNC's work.

Attorneys create and maintain a network of attorneys in similar practice areas. This network also includes other attorneys in their geographic area that may be in slightly different practice settings. One common trait of the people in this network is that they all have a relationship with the current client. All of these contacts can represent potential attorney clients to the LNC. When discussing professional challenges with colleagues, an attorney is likely to remember a job well done by an LNC who worked on previous cases. This brings the opportunity to mention the nurse by name, thus creating a potential contact for the LNC. By adding the client's network to their own, LNCs increase the pool of available clients. This pool will also likely include attorneys new to the LNC.

The contacts added through this shared networking are more likely to be in need of the LNC's services than those identified through Internet searches or telephone listings. Attorneys in general practice settings — especially those in single-attorney offices — frequently list many different practice areas in their professional and telephone listings. Although they may include medically related cases in their resume, it may not be an area with which they are familiar or accept very often. Although the LNC may make a contact that pays off in the future, it is more likely that this attorney will not need the LNC's services. Although the LNC should not hesitate to make such a contact, marketing will be more successful if he or she is able to spend that same time contacting attorneys who require medical–legal expertise more often.

Current clients will be able to serve as references for the LNC. However, if the potential attorney client has a relationship with the current client, that reference becomes even more valuable. People simply place more value on comments and assurances that come from someone they know. When she can discuss specific situations and work products, the potential client can better understand the LNC's role in her practice.

Clients who are happy with the LNC's work and who value the partnership have a stake in helping the LNC stay in business. They are more likely to recommend potential clients that they feel are dependable and favorable to the consultant. This helps avoid the undesirable client who causes problems and can spell disaster for the small and inexperienced LNC. Similarly, an attorney is more likely to recommend an LNC who has proven ability to add value to the attorney's practice.

Ways to Generate Referrals from Current Clients

Make it Easy to Give Information

The easier it is to give out the information, the more likely the attorney is to do so. The LNC should make sure that clients always have a supply of the LNC's business cards on hand. The client should always have complete contact information for the LNC that is current and up to date. It is also easier to hand someone a business card or send it in the mail than to rely on memory or an address book. Business cards may be carried easily in a wallet or case, wherever the client may be.

Business cards should be included whenever the LNC is sending something to a client by mail. One way to ensure that the client has a supply on hand is always to include two cards with each mailing. This gives the client one card to keep and several others to hand out to other attorneys. This is a more subtle means of encouraging referrals than simply sending several cards and asking the client to give them out.

The Client as Professional Reference

Another indirect means of soliciting referrals is to ask the client for a short testimonial to be included in marketing materials or on the LNC's Website. A satisfied client will normally have no problem providing this and will often create a testimonial that is stronger than the LNC suggested. The LNC should keep in mind that attorneys who practice in larger firms or corporate settings may need to get approval from other attorneys or partners before doing this.

Clients may also serve as indirect referrers simply by being included as professional references or representative clients on Websites or resumes, or in marketing letters or brochures. A review of attorney Websites will often find a list of their representative clients, especially for defense-oriented firms. Being able to see current or previous clients gives the prospective attorney client a means of judging the LNC's abilities and accomplishments. The LNC must always secure the client's permission before doing this. This can be done on an individual basis to clients that the LNC most wants to speak for him or her. This permission may also be included in the LNC's standard contract form, securing the release at the onset of the relationship, or testimonials may be requested on client satisfaction surveys (discussed in the following section).

The LNC should be careful about clients listed as references. Potential clients may or may not ask the LNC before contacting people that are listed as contacts. LNCs should make certain that the listed clients are satisfied with their work and are likely to provide positive and encouraging information. If the LNC lists such client references on a resume or Website, the list should be reviewed often to determine any additions or subtractions.

Satisfaction Surveys

Satisfaction surveys (Figure 10.1) help the LNC measure the status of the consultant–client partnership and cause the client to take a formal, deliberate look at the value added by the LNC. This is a marketing tool because it assists the nurse consultant to make corrections and additions that improve the future work product.

The survey should be fully utilized, getting all the information possible from the client at the same time. One area to explore on the survey is referrals to other attorneys. A survey is a good way to ask for this because the client is in the process of thinking and writing positive things about the LNC. It is much easier to promote the consultant while the client is organizing and writing his compliments on the LNC's work. The survey should ask the client for recommendations regarding other attorneys that may be interested in the nurse's expertise and assistance. Adequate space should be included to allow for several names and contact numbers — at least three separate referrals. Business cards included in the survey envelope allow the client to pass on the LNC's information to those contacts as well.

The Direct Approach

A satisfied client is the best marketing tool that the LNC can have. References and referrals do not need to be obtained indirectly. The reader should not get the idea that such promotions should be done in a roundabout manner to avoid notice by the client. Indirect marketing methods are merely one more way to promote services and establish credibility. The best way to secure referrals and testimonials from a client is by asking directly. Again, a satisfied client will have no problem giving such assistance because it is in his interest that the LNC remain active.

The easiest way to ask the client for a referral or reference is by telephone or in person. However, as discussed in the section on communication techniques, this does have some drawbacks. Phone calls and visits may intrude on pressing business. This is also difficult for many LNCs to do, especially if they are less assertive or have not been in business as long. One way to avoid these problems is to make the request during the course of a project once the partnership has been established. By utilizing time already dedicated to the client, the LNC avoids intruding on the client's other business matters. It may also be easier to bring this into conversation if it is framed by a work-related discussion.

Referral forms may also be mailed to clients. This works particularly well for clients located in an area other than the LNC's. Make sure the form is on the proper letterhead and includes adequate space for the client to list contact information. As with the satisfaction surveys, several business cards should be included with this form. Some attorneys would rather pass on the LNC's

information than give out contact information for fellow attorneys. This lets the client do either or both. When sending forms this way, the LNC should always include a self-addressed, stamped envelope with enough postage to cover the return mailing.

A faster alternative to postal mail is the e-mailed referral request. The LNC simply puts the request in the body of the message using a fill-in-the-blank format and then e-mails it to the client. The client then chooses the "reply" option, fills in the requested information, and sends it straight back to the LNC. This is faster and easier for both parties than handling mail. However, like any other means of communication, it has its drawbacks. As mentioned before, electronic messaging only works when both parties are well versed in its use and are comfortable communicating this way. This method also does not work as well if the client does not have the time or information at hand to answer the message right away. The longer that an e-mail message stays unanswered in the electronic in-box, the less likely it is that it will ever be answered. Thus, if the attorney must search for the information or has other issues to deal with first, it becomes increasingly less likely that the message will ever be returned. A letter with a self-addressed, stamped envelope that is sitting on the desk is a constant reminder to complete the request (to get it off the desk, if for no other reason). E-mail messages, however, are more easily overlooked.

Best Practices for Positive Partnerships

Although this chapter has dealt with many different subjects, one encompassing theme has been woven throughout. The best results come from the best relationships. Carucci's characteristics of a partnership were developed from extensive research showing that the single reason that most clients retained specific consultants was the quality of the relationship that developed.

Anyone who has ever applied for a job has been asked, "Why should we hire you for this position?" The words may vary, but the question is really the same. There are many legal nurse consultants throughout the country, as well as around the world. To be able to call a client a regular, the LNC must give that client a compelling reason to keep returning. The quality of the work is vitally important, but as the research shows, it cannot be the only thing that the LNC brings to the client. Probably, other applicants possessed the same skills and abilities. The quality of the work was likely to be very similar from one candidate to the next. What else did the winning applicant bring that the others did not?

The Measure of Success

The LNC and the client must establish the measure of success at the onset. The only way to assess the effectiveness of the interventions is to describe the criteria that define success clearly. Were those specific, mutually agreed to, and documented criteria met? One of the biggest mistakes the LNC can make is to fail to establish the markers of success. If this is not done, the LNC has no way to show the client that the outcome was successful.

For the attorney, the outcome criteria may be focused more on how the LNC affects business, at least initially. The LNC has come to the attorney in order to add value to the situation. This can be done by bringing the attorney something that he or she cannot provide. It can also be done by adding to the attorney's existing resources. While the LNC is working on one aspect of the case, the client is working on another aspect of that case or even a different case. Either way, the attorney is able literally to do two things at once. The more value added by the LNC, the more reason the attorney has to return to that LNC for help. In the business world, this is known as return on investment.

For the LNC, the outcome criteria may include more than the issues involved in the current litigation. The client is focused on understanding the medical information in the record, establishing the supporting medical data, and finding a qualified testifying expert. The LNC is also focusing on the client's satisfaction, positive reviews of the work performed, and signals that indicate the client would like the relationship to continue. After all, it is the continuing relationship that develops into a partnership, and it is the partnership that keeps bringing the client back over time. This is what keeps the LNC in business.

Use Time to Advantage

The LNC should make the most of the time with the client and make the most of the client's time. The LNC should understand what the client wants and balance that against what he or she is capable of providing. A major mistake is for the LNC to exceed limitations or promise the client something that cannot be delivered. It only takes one such episode to destroy the LNC's credibility — something not easily restored.

Morrison's Big Three

Be consistent, organized, and timely. These traits cannot be emphasized enough. A large part of using the client's time wisely is to be prepared. An LNC who appears to be disorganized or must consistently recheck facts and information during conversations and meetings costs the client time. For the

attorney, this means decreased production because time is exactly what the attorney has to sell. The LNC's focus should be on saving time, not using it.

The LNC's consistent organization and time efficiency also allow the client more time for casual or personal conversation, thus promoting the partnership. Even an experienced LNC benefits from outlining conversations and building meeting agendas to ensure that the contact is efficient and that no information is forgotten.

Be Open and Unbiased

The hardest thing for some LNCs to do is to tell the client that their findings do not support the claim. LNCs should remember that the client has retained them for their knowledge and expertise. This means that they need the nurse's honest opinions and analyses. It may seem that the easiest route is to follow the client's wishes and agree with the attorney's position and expectations. However, that will often cause problems later.

The client is basing at least some operating decisions on the LNC's opinions and findings. The LNC owes it to the client to make sure that information is accurate and complete. When reviewing a medical record for merit, for example, the LNC should make sure that the client is told all the information in the record. A client who knows how the official record supports or refutes the claim can make an informed decision whether to proceed with litigation or not to take the case. That decision is a legal judgment to be made by the attorney, based on sound information and analysis. An ethical client would rather hear the bad news before rather than after he or she has spent time and thousands of dollars to pursue a case that has little or no merit.

The analysis of the LNC should be objective and unbiased. The LNC should be wary of a client that appears to be asking the nurse to *guide* findings to fit the claim. This is most likely to happen when the attorney has filed suit and is looking for experts to back up the claim. An ethical attorney will not proceed with action in a case unless he or she believes that grounds for such action exist. It is a simple business decision. An LNC who truly believes that the client is requiring analysis or reports that support the client's claim, regardless of the facts of the case, needs to determine whether to remain associated with the case. The LNC's reputation is at stake every time he or she acts, and a poor reputation within the legal community can be difficult or even impossible to change.

Be Flexible

If legal nurse consulting was predictable and easy to do, everyone would be able to do it. Even if the client is specific and exact in his needs and expectations

in the beginning, these are subject to change due to circumstances that the attorney cannot always foresee. The attorney's situation or that of his client may change during the course of a project. Courts may impose deadlines different from those that the attorney expected or may change those previously set. The LNC must be ready to adapt to new circumstances, even if this means scrapping a significant portion of the work already done. If the LNC has discovered information that shows the need for change, the client must be informed at once. It is better to tell the client to change course than for the attorney to risk failure because of unknown issues.

For the LNC, the need for flexibility comes from schedules and business demands as well as those of the clients. The nurse should stay aware of upcoming deadlines — work and personal — when talking with clients and making plans and commitments. Because the LNC never knows when a client will call with an urgent need or when a family commitment will interfere with work schedules, it is necessary to allow time for personal needs as well as those of clients. This is not to say that it is possible to prevent any unexpected conflicts that will cause problems. However, the more that this happens the harder it is on the LNC and clients. This strains the partnerships at both ends. It may be easy for the LNC to work 7 days a week, but this takes a toll on anyone.

Learn from Success as well as Failure

Life offers unlimited opportunities to learn and grow, as does the practice of legal nurse consulting. It is a good idea for the LNC to perform a systematic review of each project or client, perhaps in conjunction with postproject client surveys. This allows the LNC to determine what went right as well as what could have been better. Although it is much maligned, the concept of the annual performance review is a constructive one. Because many LNCs work independently, they lack the immediate feedback from their coworkers or supervisors that they have had in previous settings. Simply making a two-column list of plusses and minuses can help put the project in perspective, give a clearer understanding of the events, and provide the feedback needed to improve and grow. Over time, specific minuses can be eliminated and plusses can be multiplied.

The important thing to remember is that entries will be put in the minus column. With the passage of time and widening experience in the field, the law of averages will catch up with any LNC. There will always be times when the LNC will think, "I wish I had done that differently" or "I wish I had not done that at all." Nobody is born an expert in marketing or client relationships; people must learn as they work. Learning comes from research and information gathering before the action, as well as on-the-job training. Holtz (1983) points out that long-term success will include setbacks and failures.

The successful consultant makes sure that these are learning opportunities rather than permanent failures and has the courage to try again. If the LNC decides not to be beaten and keeps learning and progressing, success is inevitable.

Suggested Reading for the LNC

There are numerous sources of help and advice for the LNC in addition to the listed references. In addition to books written specifically for consultants, a number of texts deal with the general topic of customer service. All LNCs should continue to add to their knowledge in this area. LNCs who are new to the business will benefit from such preparatory research and can avoid many basic mistakes. Experienced consultants should also maintain their education because of the many ways in which to err when dealing with clients and their needs.

In particular, this writer recommends a book by Harvey Mackay entitled *Dig Your Well before You're Thirsty.* Copies of the book should be available in a local library or university business school library or may be ordered via the Internet. This book is an excellent teaching tool, particularly for the new consultant, and the lessons are valuable to anyone that wishes to improve interaction and networking skills.

In addition to library research, the LNC should join the American Association of Legal Nurse Consultants and one or more of the many electronic discussion groups, known as listservs, on the Internet. These groups provide e-mail contact with any number of nurse consultants and experts around the country, as well as around the world. Such groups provide LNCs the opportunity to "talk" with other consultants on a daily basis, learning from their experiences as well as sharing their own. For the new LNC, these groups can provide an endless source of education before starting a business.

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Business Aspects of Expert Witnessing

11

LENORA SMITH

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Introduction

Developing an expert witness niche is a golden opportunity for some legal nurse consultants (LNCs). However, LNCs should be cognizant that expert witnesses are held to the highest scrutiny; it is not a role to be taken lightly. Solid business principles lay the foundation for the successful building of the expert witness venture. Integrity, professionalism, respect, and credibility are key characteristics for expert witnesses and are essential to the success of their businesses. This chapter explores issues that pertain to the elite business of expert witnessing. Questions regarding qualifications, marketing, fees, and contracts are discussed.

The Expert Witness

Defining the Expert Witness

Expert witnesses are the keys to cases filed by attorneys. Cases can be won or lost with the expert's testimony. Expert witnesses are just that — experts in their particular area of knowledge and skill. An expert witness is someone "skilled in a particular art, trade or profession or with special information or expertise in a particular subject area" (Poynter 1997, p. 14). Hamilton (2003) regards an expert witness as someone "whose credentials of education and experience qualify him or her to evaluate data in a legal dispute and report findings" (p. 71). Another source describes an expert witness as "a witness in a court case who is called because he has specific knowledge of a particular specialist field rather than having knowledge of the facts surrounding the case in question" (MyLawyer.com, n.d.). Experts are provided with facts in a case, but their opinions are based on their experience and knowledge. Experts testify for the plaintiff and for the defense.

Attorneys search for experts who have extensive education or experience in an area specific to the case. The expert nurse should be knowledgeable and experienced in the same clinical arena as that of the nurse involved in

the case (Edel et al. 2003). In some cases, an expert may be required who has an advanced degree. In other cases, however, a person with a bachelor's degree who has experience and skill in a particular area might speak to issues involving someone with an advanced degree. In addition, attorneys must adhere to state laws governing expert witnesses, which may define specific qualifications or guidelines.

Qualifications

In order to be an expert witness, the LNC must have experience and knowledge about the subject matter being tried; however, attorneys will be particularly attentive to certain other qualifications. Good communication skills are a MUST. The LNC must be able to communicate an opinion effectively and respond quickly in defense of the opinion (Poynter 1997; Albert 2002). The LNC must be able to relate technical information to the jury so they will be able to understand and apply the information to the issues at hand. The pressure during depositions and trials is immense, and the ability to communicate clearly and concisely is essential when taking on the expert witness role.

Most attorneys look at an expert's credibility, which is one of the most important attributes of an expert. The ability to be objective as an expert witness is crucial. Conflicts of interest must be avoided. The following are examples of conflicts: being employed by the defendant facility or another facility under the same ownership; being friends with the defendant; and having reviewed the same case for opposing counsel. Honesty and integrity go along with credibility and are characteristics of being an expert witness.

The LNC expert witness must be ethically obligated when fulfilling this role. According to the American Medical Association (AMA 2004), unethical expert witnesses can result in an unfair verdict causing the justice system to fail. "Medical witnesses, either for the plaintiff or the defense, must hold themselves to the highest ethical standards" (AMA). Revealing a conflict of interest to the attorney might mean forfeiting a case, but the expert's ethics would be above reproach. The expert must also never work on a contingency basis. The expert's credibility as well as objectivity will be impeached and this individual may get very few cases afterward.

A more subtle form of contingency fee request may arise when the attorney settles the case for less than he hoped. He may ask the expert to lower the fee to permit the attorney or his client to retain more of the settlement. This request is, in effect, asking the nurse to accept payment contingent on the settlement. This is an unfair request of the expert, who has provided services and has no control over the outcome of settlement discussions.

The expert must be able to teach and persuade the audience and to show judge, jury, and counsel why his or her opinion is the appropriate one (Poynter 1997). The expert's ability to break down technical terms and information is important to the jury; if they understand the subject matter, they will be better prepared to render a verdict. The expert must be very convincing and likeable (Poynter). Appearance should not be overlooked because the expert needs to look knowledgeable in the subject matter. Good writing skills are essential for an expert witness. Reports should be well written, using good grammar and correct spelling. In order to exude professionalism, the expert must write professionally.

Although some attorneys will work only with experienced expert witnesses, others prefer the inexperienced expert. Preparing an expert for a deposition and/or trial takes an enormous amount of time. This time is shortened if the attorney has an experienced expert. Occasionally, however, inexperience works to the attorney's favor; the person does not appear as a "hired gun" (someone who spends the majority of the time as an expert). Inexperience should not hinder the LNC who wants to become an expert. Remember, everyone has to start somewhere.

The expert's location is an important qualification to some attorneys because finding an expert in close proximity to where the case will be tried saves the attorney travel expenses (Poynter 1997). Local experts may be more familiar with the standards of care and could be more credible than someone hired from another state. Some local experts, however, refuse to testify against one of their own, making it difficult for the attorney. Going out of state may be the attorney's only recourse and, if so, he or she may need to show the court not only why this was necessary but also that the witness has met the court's requirements where experts are concerned.

Certain states require certain qualifications of expert witnesses. Even though the attorney will decide whether the expert meets the state's qualifications for expert witnessing, it would behoove the LNC to become knowledgeable of the rules that govern serving as an expert witness. For example, in North Carolina, the expert witness must practice in an area comparable to the area in which the incident occurred (North Carolina General Assembly 2003). If the incident occurred in a teaching facility in a large city, then the expert must also practice in a teaching facility in a large city. Also in North Carolina, the nurse expert must have been clinically active in nursing or in nurse education at the time of the alleged event. That rule applies in Florida as well (Florida Senate 2004). In Tennessee, if an expert must be located outside the state, the state must be contiguous, or next to, Tennessee; the expert could not be located in New York.

Most LNCs already have these qualities or characteristics; if not, they would not be practicing LNCs. If the LNC is lacking in some areas, maybe

becoming an expert should be reevaluated. Still, qualities can be learned, if the LNC desires a thriving expert witness business.

The Role of the Expert Witness

It is imperative that the LNC request clarification of the role when approached by attorneys. The role of the expert witness differs from that of the behind the scenes LNC. The expert witness is expected to testify as to his or her opinion of the issues in the case or breaches in the standard of care. In most states, anything the expert writes, whether it is personal notes or reports to the attorney, becomes discoverable information by opposing counsel. Behind the scenes LNC work, on the other hand, is usually not discoverable because it is considered attorney work product and falls under attorney–client privilege. Clarifying the requested role will ensure that the LNC is on the right track with the attorney.

Marketing

Fine-Tuning the Expert Witness Image

Case Selection

When obtaining cases from attorneys, the LNC must remember not only the state's rules of evidence but also those from states where attorneys are located. The LNC expert should only accept cases in which he or she has the knowledge, training, and skill to offer an opinion as to whether breaches occurred in the standard of care. Specifically, it is probably wise not to accept cases in which the LNC has no special training or knowledge. For example, a certified rehabilitation nurse should not agree to be an expert in an obstetrical case. Although the LNC may have received training in obstetrics in nursing school, this is not qualification to be an expert in the field.

In the business of being an expert, it is crucial that the LNC ask as many questions regarding the case as possible to ensure meeting or exceeding the qualifications of being the expert. If the LNC does not feel comfortable after obtaining the requisite information, the case should be declined. However, the LNC may want to refer the attorney to someone else who may be better qualified. This allows the LNC to give work to another LNC expert as well as lets the attorney know that the LNC is ethical, credible, and honest; this may bring the LNC more business in the future.

Business Cards

Business cards are indispensable items. They are a great tool for networking as well as marketing. Business cards can be professionally purchased or made

on a personal computer. Professionally purchased cards can be ordered from office supply businesses, such as Office Depot, Staples, or Office Max. In the American Association of Legal Nurse Consultants (AALNC) book on principles and practices, it is suggested that the business card appear uncluttered and be simple (Ellington et al. 2003). It should include the name of the company, address, telephone number, facsimile number, and e-mail address, if possible. The cards should be of heavy card stock in a neutral color and have an easily read font (Ellington et al. 2003).

With the advancement of computer technology, some publishing software can make professional-looking business cards at a cost less than those purchased at office supply companies. Printing business cards from a personal computer makes it easier to change addresses, phone numbers, and e-mail addresses (Joos and Joos 2000). Paper stock weight is sometimes an issue with these particular business cards, but many LNCs make beautiful and professional-looking cards. However, printing may be a problem if the printer is not cleaned and serviced regularly; the print may be smeared and result in cards of bad quality. It is best to spend the extra money to buy professionally printed cards. Quality and good taste will intensify the LNC expert's image (Joos and Joos 2000).

Curriculum Vitae (CV)

The LNC expert will need to develop a curriculum vitae (CV) to send to the hiring attorney, who will then send it to the opposing counsel. The expert's CV will be used to identify whether the expert qualifies for a particular case (Poynter 1997). A CV differs from a resume in that it is usually longer and more detailed. A resume details experience, employment, and professional activities in an abbreviated form, usually no longer than two pages. In addition to all these items, a CV also details publications, presentations, continuing education, certifications, consulting, and expert testimony experience (Poynter 1997; Ellington et al. 2003). It should outline all relevant skills and experience that gives credence to the LNC expert.

The CV, like the resume, is written in chronological order, with recent positions first. It can be long in order to list all relevant information; however, according to Poynter, the longer the CV is, the more information the expert may have to defend to opposing counsel. It should be written well with no typographical errors and "should not include any handwritten additions or mark-outs" (Ellington et al. 2003, p. 1035). The CV should not include an item stating that the nurse is an expert witness. This imparts the appearance of working as a hired gun. Professional help is available to assist in preparing a CV.

Websites

Advances in computer technology have paved the way for people to do almost everything from the Internet. Websites can be a wealth of information for lay persons, researchers, medical professionals, and so on. The Internet has also become a great way for people to shop at home. It is no different with attorneys and other business people; more people are looking for services online. However, before making the decision to have a Website, the LNC should do the homework. Little research has been done to determine whether a Website is profitable for LNCs (Ellington et al. 2003), although the number of LNC Websites has increased in the last few years.

A domain name, which is the Web address, must be reserved. It is usually only purchased for 1 or 2 years, then must be renewed or it goes on sale on the Internet. A Website must be "hosted" or placed on the Internet by a Web hosting company, of which there are literally thousands; their prices vary. Usually, the fees are yearly and can be paid monthly; most companies will provide a discount if one pays for 1 to 2 years in advance. These fees also must be kept up or the Website will be unavailable to those surfing on the Internet.

The next step is to personally design the Website or hire a Web designer to do so. Web design companies can be very expensive and most require that their services be purchased for upkeep of the site. Most Web hosting companies have a control panel in which one can manage e-mail, counters, and other effects of the Website. Those that have control panels usually have Website builders used by the novice Web designer to design the Website. It consists of templates that only need business information added and is fairly simple to use. For the computer savvy LNC, software is available, such as Microsoft® FrontPage®, or DreamWeaver that can design Websites and be uploaded to the site.

In order to get "hits" on the Website, search engines must find them. When surfing the Internet, key words are put into search engines to find what the 'shopper' is looking for. Many companies will ensure that the site is placed on the first couple of pages of a search engine. These types of services can be expensive and may not generate a lot of hits on the Website.

The LNC expert just starting a business will want to be mindful of budget constraints. In the beginning, the cost of having a Website might not be the wisest use of those budgeted dollars. The LNC expert will need to perform research and consult with other experts to decide whether this avenue is worth pursuing. (See Chapter 3 for more information.)

Methods of Marketing

Marketing is one of the hardest things that a nurse can do; after all, nurses almost never have to market themselves. Yet, marketing is one of the best strategies for letting attorneys know that the LNC expert is available. The LNC expert must first narrow down to whom he or she will market (the target audience). Usually, the target audience is attorneys or law firms who will utilize the expert's services. A law firm or attorney who specializes in real estate law probably will not need an LNC expert.

One method of locating medical malpractice attorneys is to read a local jury verdict publication or the state's legal newspaper. Another way to find target audiences is to use *Martindale–Hubbell*, a directory that lists attorneys in a variety of ways. The LNC can find attorneys by law firms, practice area, and/or location. Not all attorneys are listed in the directory, however. There are also online directories of attorneys. In addition, an Internet search using specific key words will reveal attorneys who practice in specific areas.

Once the target audience is found and all the business materials are prepared, the LNC can then start the process of marketing. Developing and learning successful marketing skills will ensure that a lucrative business developes. Several marketing methods have been successful for many LNC experts.

One of the most widely used marketing methods used by LNCs is mail-outs. The LNC sends out a letter of introduction, or cover letter, explaining how the LNC expert can be of benefit to the attorney. Joos and Joos (2000) stress that most attorneys do not want to hear about what the LNC expert can do; they are more interested in how the expert can help *them*. They also relate how important an attorney's time is, so the expert does not want to make the cover letter overly long; it needs to be short and to the point to ensure that the attorney has time to read it (Joos and Joos 2000).

The LNC expert may tell the attorney in the cover letter that he or she will follow up with a telephone call in a few days in order to set up an appointment to discuss the information. With the cover letter, the LNC expert should include a CV and a couple of business cards, one for the attorney and one for his paralegal. Of course, it is always a hope that the attorney may encounter another attorney looking for an expert and the attorney could pull out the extra card. The attorney may file this information in the experts' file, but may remember it a couple of months later when a case involving that expert's experience comes along.

A few days after the attorney should have received the information, the expert should phone him. In most cases, the receptionist is going to screen the attorney's calls and the expert will not get past this "gatekeeper." Before giving up the potential client, the expert should try a few more times to get through to the attorney, leaving voice mails and messages. If an appointment is made, remember that sending a thank-you note expressing gratitude for

the meeting is another way to keep the expert's name in the attorney's mind. Occasionally, the LNC expert will receive a phone call the day after the attorney receives the information. The expert should know that this rarely occurs and should keep marketing.

Another method for marketing to attorneys is to place one's name in a directory of experts. These directories have numerous listings of different types of experts, such as aeronautical, engineering, medical, accident reconstruction, and so on (Poynter 1997). Several are located on the Internet; others have printed copies. One good example of an expert directory is the LNC Locator® on the American Association of Legal Nurse Consultants Website (www.aalnc.org). As a benefit of being a member of the national organization, one can be listed on this Website.

Attending and/or exhibiting at bar association meetings and other business functions is an advanced marketing method. Meetings are a great place to meet potential clients. Handing out business cards is appropriate if the situation arises. It is crucial to inform meeting guests in a timely manner about what the expert does; rehearsing before the meeting may be of benefit. Exhibiting is a tremendous networking and marketing tool; however, it can be very costly. The expert will want to weigh whether the income generated outweighs the cost of exhibiting.

Planning the items that will be needed at the exhibit ahead of time is essential to a rewarding experience. Some items might include brochures, business cards, samples of previous work, and some type of give-away prize that has the business name on it (Ellington et al. 2003). A list of attendees may be distributed after the conference; this is another way of obtaining potential clients because some of the attendees may not have stopped at every exhibit.

In addition to attending meetings, the expert can offer to speak at a meeting. Speaking on a subject in the area of expertise, the LNC appears knowledgeable and may obtain a potential client (Poynter 1997). Of course, the LNC expert will need to have good communication skills and should not find speaking to groups traumatic. If so, it is likely that the expert will lack confidence while speaking, which may be detrimental to the business. The expert can also offer to give educational training to attorneys and their staffs. Information provided at these training sessions should be on a topic that will benefit the firm.

One good marketing method is writing for publication. By writing for legal journals, newspapers, and the like, the expert shows knowledge in a subject area and lets attorneys see writing skills. One such newspaper is *LawyersWeekly*, a weekly publication to which numerous attorneys and other legal support personnel subscribe. The expert should research and know the guidelines and requirements necessary for submission of articles. When submitting an article to any publication, though, the LNC should ensure that

the material will benefit the audience and should avoid writing an article that sounds like an advertisement (Ellington et al. 2003).

Referrals and word of mouth are an expert's best marketing tools. Doing an excellent job for one attorney can lead to numerous referrals to other attorneys. An expert who does a good job for an attorney can usually get repeat business. Most LNCs say that the core of their business comes from such attorneys. Also, the LNC expert should ask attorney-clients for other attorneys' names in order to build the client database. If the expert is slow to produce work or frequently cancels depositions, word will eventually get around not to hire that particular person. This type of behavior will bode ill for future LNC experts, ensuring that attorneys will not use such experts. Bad publicity is bad for business.

Other marketing methods include cold calls and newsletters. A cold call is calling on the attorney when no other communication or contact has been made (Ellington et al. 2003). Some LNC experts find these calls extremely difficult to make. One must be prepared ahead of time for rejection. Cold calls are occasionally successful, if the expert can get past the gatekeeper to the attorney. Newsletters are used to inform the reader and as a marketing tool. They can be used to obtain new clients or keep active clients. They should be well written and contain information that will be interesting to the receiving audience. In addition, they should be sent on a regular basis and not sporadically (Ellington et al. 2003).

The consensus among LNCs and attorneys about advertising expert services is that the expert will be considered a "hired gun" — one who only testifies for financial reasons rather than offering genuine opinions. This tends to invalidate the expert's credibility concerning testimony. Attorneys will often ask how much time the expert spends offering expert testimony, and most attorneys will not hire experts if they spend more than 10 to 20% of their time as an expert. Some experts, however, advertise and have no problem with opposing counsel attacking their credibility. Poynter (1997) suggests that when the expert is asked by opposing counsel if he or she advertises, the reply should be, "Yes I do, but so do attorneys."

Advertising is a strong method for marketing but can be relatively expensive. For most experts, it does not generate a lot of revenue. The decision to advertise requires thorough consideration by the expert.

Fees and Contracts

Fees

One of the most frequently asked questions when developing an expert witness business is, "What do I charge for my services?" What an expert

charges depends on the clinical experience, certifications, and educational background (Miller et al. 2003). Researching the fees of other experts with the same or similar clinical experience or experts in the same geographical area is one way to establish a fee schedule (Miller et al. 2003). LNCs who locate expert witnesses are a source of information because they usually obtain experts' CVs and fee schedules to pass on to their attorney-clients. In addition, LNCs who work in law firms will be able to assist the novice expert. The following sections discuss methods of setting retainers and rates.

Are Retainers Necessary and/or Refundable?

A retainer is payment in advance for work to be performed. It is a preset amount, usually equal to several hours of work. Retainers are used by most attorneys before taking on a case. The retainer is "insurance" for payment of the work and makes the agreement official. Some experts apply the retainer to the first invoice; others deduct it from the last invoice. The retainer should cover at least the initial review of the case, which will depend on the size and number of records (Miller et al. 2003). Some experts ask for additional retainers if the amount of work is excessive. This is especially true if the expert thinks that problems with collection may occur, or the case settles or is terminated (Poynter 1997). Other experts hold the retainer until the end of the case.

Are retainers necessary? Retainers should always be sought for several reasons. Cash flow is crucial; therefore, a retainer is advisable (Miller et al. 2003). A retainer will assist in paying business expenses incurred during review of the case. The risk of having the case settle after the expert has spent time on the case is another reason to ask for a retainer. Some experts have experienced collection problems, making it difficult to establish a relationship with clients from whom the expert would not necessarily require a retainer. Thus, it is prudent for the expert to add a retainer to the fee schedule.

Gutheil and Simon (2002) suggest a retainer be required and nonrefundable. Their rationale is that the attorney could give a retainer just to keep the opposing side from hiring the expert. Decisions to refund the retainer should be made ethically and appropriately and should be based on the work that was done on the case. Refundable retainers should be covered in the fee schedule as well. If the retainer is a flat fee based on a certain number of hours' work and the expert spent fewer hours than what the retainer covered, a portion of the retainer should certainly be refunded.

The retainer might not be refunded if the expert quoted a flat rate for the initial review of the case. If a retainer is obtained and the expert receives adequate notice (i.e., before work on the case has begun), or the case is terminated or settled, ethically the entire retainer should be refunded. The retainer might not be refunded if the attorney used the expert's name in the

process of settling the account. The mere fact that the expert is expected to testify in the case may be effective in settling a case. Policies regarding retainers should be clearly stated on the fee schedule to avoid misconceptions on the part of both parties.

Flat Fees and Other Rate Methods

Flat fees are set amounts charged for the review of a case. These types of fees simplify rate setting and make it easy for the expert to bill. For example, an expert might set a flat rate of $2000 for the initial review of the case. However, the number of records may be voluminous, depositions may take longer than planned, or expenses may be excessive. Often, flat fees must be renegotiated, depending on the work to be performed. The variables in attempting to plan for a flat fee are unpredictable; therefore, these types of fees are not recommended.

Use of hourly rates for review of the records, research, and producing reports is a better method of billing for time. In establishing an hourly rate, the expert should include business costs, such as office expenses, marketing costs, and other expenses. Charging the client for ordinary expenses each time that they are incurred and sending an invoice for them is sometimes frustrating to attorneys. Recordkeeping is simplified with this rate-setting method (Miller et al. 2003).

Out of town travel is another fee rate to be considered. It is generally billed based on time spent from home to destination, minus sleep and personal time. To avoid having to track these hours, however, most experts charge a flat rate — usually more than a specified amount of miles from their hometown — or set a flat daily or one-day rate for this time. With the flat rate, the expert then charges for the time spent on the case while out of town. Deposition and trial time is included in this fee. Out of town expenses are a standard charge, however. All travel expenses are invoiced, including meals, car rental, parking, etc. The expert should avoid paying for airfare; last minute changes in schedules can result in the expert trying to get compensated for unusable plane tickets. The attorney's office should make hotel accommodations for the out of town expert, including the night before testimony if necessary. The attorney needs the expert to be fresh and vibrant on the day of testimony. If the attorney is reimbursing mileage for an expert driving in from out of town, it is reimbursed at the current IRS mileage-allowance rate (Miller et al. 2003).

Some experts charge differently for deposition and trial time from record review, research, and report writing. Because these activities are usually more stressful and emotionally draining, the expert usually charges more. Again, a flat rate is not recommended; trial time alone could last for days. A clinically active expert will need to be compensated for time away from work. For

example, the expert may charge an hourly rate of $85 to $150 for consulting services (i.e., record review, reading depositions, etc.) and $150 to $200 for testimony time, which includes deposition and trial.

Billing for deposition and trial time has several considerations. For example, the expert should know the court rules regarding who pays for travel time. Other considerations include:

- Avoid a deposition in the expert's home.
- Avoid a deposition in the expert's work site, where distractions and interruptions will occur.
- Ask the attorney who hired the expert to pay the fee for the deposition and then to collect it from opposing counsel; this saves the expert the effort of trying to collect from opposing counsel.
- Consider the advisability of a minimum number of hours for deposition. Some experts have a minimum, but others have found that a minimum number of hours encourages opposing counsel to get his "money's worth," so every nuance of the CV or case is explored in excruciating detail.
- Consider charging a rush fee if the retaining attorney supplied the expert with new material to review in the week before the deposition. This is unfair to the expert, who must read, analyze, and absorb new material.
- Cancellation fees for the deposition are based on the number of days in advance that the deposition is cancelled. This also applies to the trial date. Cancellations are covered more thoroughly later in the chapter.
- Having the file precisely organized before the deposition will assist the expert in locating any document instantly; this increases confidence and professional appearance.

Contracts

After the decision is made to accept the case, the expert notifies the attorney and an agreement is reached. A contract should then be initiated. In some cases, the contract is simply a letter from the attorney disclosing that the expert has contracted to accept the case and listing the fee arrangements agreed upon. Most experts, however, will not work on a case without a legally binding contract. This is especially true of those who have had collection problems from attorneys. Some experts require contracts for new clients to ensure a relatively uneventful collection process. A contract details specifics of the arrangement between the attorney and the expert and will prevent misunderstandings related to services, fees, and payments (Miller et al. 2003). Samples of contracts may be obtained from other experts, attorneys, or the

AALNC's books, *Legal Nurse Consulting: Principles and Practice*, and *Growing Your Practice: Resources and Tools for Legal Nurse Consultants*. Figure 11.1 is an example of an expert witness contract.

Postponements and Cancellations

Unforeseen circumstances may cause a trial to be postponed. The expert has usually set aside time for depositions and trial testimony and does not expect to be fulfilling regular duties on those dates. For this reason, the attorney should notify the expert in a timely manner of a postponement; however, this is not always feasible. The contract should be specific with regard to fees for last minute postponements and cancellations. In most cases, experts require that prearranged fees be paid.

The decision to terminate or cancel expert witness services should be made only after extensive thought and consideration. For an expert to terminate a contract is serious. Obviously, the expert should have a compelling reason for terminating services, such as illness, emergency situations, changes in opinions, or a conflict of interest found in new information. Any one of these reasons should be thoroughly discussed with the attorney before terminating services. Withdrawal or termination from the case may also be desirable because of problems with the attorney-client, such as unprofessional or abusive behavior, failure of payment for services rendered, or pressure to alter opinions. Any conduct that results in disrespect, dishonesty, or harassment to the expert is not acceptable behavior and should not be tolerated (Miller et al. 2003). These types of problems may jeopardize the expert's ability to render an unbiased opinion and decrease enthusiasm for the case.

Withdrawal may be increasingly detrimental to the case as it progresses (Miller et al. 2003). Clearly, there are fewer problems with terminating services before depositions take place rather than afterward. It is also wise to seek counsel before terminating services with the attorney-client.

If the decision to terminate is made, all materials received from the attorney should be returned along with a letter stating that the expert is unable to continue with the case (Miller et al. 2003). Although an explanation is not required, the reasons underlying the expert's decision can be provided. However, if unprofessional conduct is the reason for withdrawal, it is perhaps better not to mention it. All materials should be sent certified mail or by some other method that requires signature proof to ensure that the package arrives at its destination. The expert should expect a telephone call from the attorney, in which he/she may be upset or incensed and demand a return of fees paid or the continuation of the case. The expert must be prepared to respond to the attorney and his demands (Miller et al. 2003), but is under no obligation to return fees.

Expert Witness

Professional Services and Fee Schedule Agreement

Provision of Documents

The retaining attorney is expected to furnish all relevant documents and materials as they are obtained and to provide all requested documents and materials as discovery rules permit.

Charges

All time that is billed on an hourly basis is invoiced in quarter hour increments. This time is rounded up to the next quarter hour. The expert cannot predict or guarantee total fees. Billing will depend on the amount of time spent on the case and other expenses.

Fees

The expert's time to discuss case materials in the office of the expert or attorney; prepare for deposition, hearings, arbitration and/or trial; testify at deposition or trial; portal to portal travel time; and all other work on the file $xxx/hr

Hourly fees are subject to change. Charges are based upon the prevailing fee schedule when the work is performed.

Expenses

Including, but not limited to:

Travel: automobile expenses are billed at $x.xx per mile plus tolls and parking charges. Airfare, train fare, lodging, etc. are to be paid by the law firm in advance. The expert shall bear *no* responsibility to reimburse the law firm for nonrefundable expenses, such as airline tickets, in the event that testimony is cancelled. Meals are billed as incurred when time away from office exceeds 4 hours.

Document reproduction and delivery costs (Federal Express, courier and other expenses): as incurred.

Retainers

A $xxxx.xx refundable retainer fee and a signed fee schedule and/or a retaining letter are required before we begin searching for the expert. Billing will be charged against the retainer. (Company Name) requires a second retainer of $xxxx.xx from its clients for any anticipated or requested work beyond the work covered by the initial $xxxx.xx retainer fee. Once the second retainer has been fully used up, we will ask for a third retainer, etc. until the litigation has been resolved and all work is completed. (Company Name) reserves the right to modify the amount of the retainer or withhold submission of a report pending receipt of a requested retainer. Please make check payable to (Company Name) and forward directly to our office. Our tax identification number is xx-xxxxxxx.

The publication, listing, or designations of (Company Name) expert without our permission and formal retention is prohibited. Any violation will be considered retention and will result in invoicing for a $xxxx.xx *nonrefundable* fee.

Invoices

Invoices will be sent periodically to clients and are due immediately upon receipt. Failure to make payment of invoices shall constitute a default of our agreement. Any questions pertaining to the billing must be put in writing and postmarked no more than 10 business days after the date of such billing, after which time the billing will be considered correct and payable as billed. Outstanding balances over 30 days are subject to an interest charge of 1.5% per month each month until paid. The expert, without liability, may withhold delivery of reports and may suspend performance of his/her obligation to a client pending full payment of all charges. Failure to include a billable item in an invoice shall not constitute a waiver of the right to add the charge to a subsequent billing.

Responsibility for Payment

Billing is *not* contingent upon the findings and/or conclusions reached. Responsibility for payment is that of the client (law firm/insurance company) engaging the expert's services and is not contingent upon client's contractual agreement(s) with plaintiff/defendant third parties and/or case status. Law firm is responsible for the payment of all fees. If a third party, such as an insurance carrier, is designated to pay fees directly to (Company Name) , the third party shall be identified by name, address, and telephone.

Name: _____

Address: _____

Phone: _____

Deposition

Depositions cannot be held in the homes or offices of our experts. Counsel is responsible for arranging for a room and court reporter. A retainer of $xxxx.xx shall be paid no later than 7 days before a deposition. The fee for the deposition (preparation time, portal-to-portal travel expenses, waiting for deposition to begin, deposition, and postdeposition meeting) will be subtracted from the retainer. Counsel who retained the expert is expected to obtain reimbursement from opposing attorneys. Because our experts are frequently using vacation or personal days to be available for a deposition, last minute cancellations are problematic. There will be a 4-hour cancellation fee if the deposition is adjourned less than 72 business hours prior to the scheduled date.

To safeguard against any assertion or allegation that our work may in some way be influenced or be contingent upon the analysis of our expert, we require that all outstanding invoices and the $xxxx.xx retainer be paid, in full, prior to our furnishing testimony in deposition.

Trial

Payment of any remaining unpaid invoices and the court appearance fee is due in full 7 days prior to the trial appearance date. Any balance owed will be billed following the trial. An invoice for court appearance expenses (such as mileage, parking, and meals) or hours if not covered by the retainer, will be sent following the appearance at the trial. In the event that the case settles before the court date, the testifying fee will be refunded in full if the testifying date is cancelled more than 72 hours in advance. There is a fee of 4 hours for cancellations within 72 business hours of a reserved testifying date.

Closure of Case

The client is responsible for paying the fees even if the outcome of the case is not favorable. Responsibility for the notification of settlement of a matter is that of the engaging client. All charges incurred to the time of notification will be billed. Lack of notification will not obviate charges incurred even when disbursements related to this matter have been made.

Collections

In the event that it becomes necessary for (Company Name) to retain an attorney or collection agency for collecting outstanding fees or any other breach of this agreement, the client agrees to pay (Company Name)'s reasonable attorney fees and costs incurred in enforcing its rights under this agreement. A 30% surcharge will be added to the outstanding balance if a collection agency becomes involved in the collections process.

SIGNATURE:_____

Enforcement

It is specifically agreed by and between the parties that this contract is deemed signed and entered in City, County, State. Any action to enforce or interpret the terms of this agreement shall, by specific agreement of the parties, be within the jurisdiction of City, County, State.

Severability

If any provision of this agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Termination

(Company Name) reserves the right to terminate this agreement in the event of nonpayment of our fees and expenses, or other causes. All outstanding fees shall be paid at termination.

Modifications to the Agreement

All modifications must be agreed to and confirmed in writing. I have read the Expert Witness Professional Services and Fee Schedule Agreement. I understand and agree to the terms contained therein. I understand that (Company Name)'s expert will not begin work on this case until a signed copy of this fee agreement and the retainer has been received by (Company Name).

Signed _____

Attorney or firm representative as individual and on behalf of firm (signatory shall have the power to bind the law firm with regard to this agreement)

Firm:_____

Case name: ___Date:_____

Please sign this page and return the original agreement to (Company Name) after copying for your files.

Figure 11.1 Sample Contract

Liability

Experts are accountable for their opinions and testimony. In rare instances, experts have been sued for doing a poor job on a case. Opposing counsel may sue the expert for defamation, negligence, misrepresentation, and intentional infliction of emotional distress (Poynter 1997). Experts can even be sued by the attorney for mistakes or poor performance. This can be alleviated if the expert adheres to professional standards of conduct, ethics, and practice; meticulous work product; and commitment to honest and truthful opinions (Miller et al. 2003). Professional malpractice insurance, including errors and omissions, should be considered when deciding to pursue an expert witness business.

Billing

As necessary components of operating an expert witness business, billing and collections are often topics of discussion among experts. Invoices should be sent regularly, such as on a monthly basis, and more often as the work load increases. Some experts find it helpful to tell the attorney when and/or how often they will be sending invoices. Many attorneys find it easier to pay small bills rather than large ones. The invoices should note the date of the service, type of service performed, hourly rate, and the expert's tax ID number or social security number. In some instances, the terms of payment may be included, such as interest due on invoices over 30 days. Adding interest is discretionary, however.

When and how experts get paid depend on the type of case. For example, typically defense medical malpractice and personal injury cases are paid for by insurance companies. The defense attorney bills the insurance company, which then forwards payment to the expert witness. It may take longer for the expert to receive payment. If, however, the expert does work for the plaintiff side, payment is made by the attorney and could depend upon several factors, including the size of the firm and whether the client is paying for services rendered.

Most attorneys respect their experts and the work that they do and are quick to pay them. If, however, the collection process is slow, a phone call to the attorney may speed up payment. Another, admittedly powerful, alternative is to suspend work on the case until payment is rendered. If the expert wants to avoid a large loss, a certified letter informing the attorney of consequences of nonpayment, with a copy of the invoice, should be sent (Miller et al. 2003). This usually receives prompt attention. Experts have also taken attorneys to small claims court or used a collections agency when payment is not forthcoming. The most cost-effective process should be used by the expert in collecting payment. Chapter 7 adds more to this topic.

Business Practices

Having contract, billing, and collections processes in place enables the expert to feel more secure when work begins arriving. The expert witness must expend a lot of time and energy in getting the business started. Credibility and ethics play an important part in business practices; the expert will need both in order to succeed (Miller et al. 2003). Unlike the behind the scenes LNC, everything about the expert will be open to scrutiny by opposing counsel and may be used as questions during the deposition (Miller et al. 2003). If the LNC expert has the qualities listed at the beginning of the

chapter, the business will have a sturdy foundation for success. The following sections discuss intake procedures; scheduling; keeping track of time; developing forms and checklists; and security and confidentiality of documents.

Case Intake Procedures

When that telephone call from the attorney comes in, the LNC expert needs to be as prepared as possible. Of course, it is normal to be nervous. The nervousness will be lessened, however, if the expert has the necessary forms and questions at hand. During the business start-up process, the expert may have asked many questions of more experienced LNC experts and received many helpful hints and tips. Some of those more experienced may even have shared forms and checklists. If not, the expert can develop one using the information here.

The initial telephone call by the attorney is usually to inquire whether the expert is interested in the case. It is acceptable to tell the attorney that the decision to take the case will be communicated in a few days. This allows the expert to research the attorney to learn about credibility and reputation. The expert does not want to be known as someone who works with disreputable clients.

Intake forms can make gleaning information from the attorney-client much easier. The expert will want to know the following:

- The attorney's name, address, e-mail address, and phone number, as well as whom the attorney represents.
- Contact person, if other than the attorney.
- The opposing attorney's name, at the very least.
- The names of the plaintiff and defendant.
- Type of case (personal injury, medical malpractice, etc.).
- Dates of depositions, meetings, etc., if known.
- Brief overview of facts in the case, including what the attorney specifically wants the expert's opinion on.

It is important to identify each of the key persons in the case, especially the plaintiff and defendant. Several types of software are available that will allow experts to know when a conflict exists. Tables or spreadsheets developed in a word-processing or spreadsheet program are as effective. Also, some database programs can be customized to the needs of the expert LNC.

When asking about due dates for opinions (reports or affidavits of merit), the expert needs to be aware that these may not be too flexible. However, at least an approximate time frame will help the expert know whether it will

be possible to assist the attorney. By gathering brief facts of the case, the expert can save time as well as the attorney's time by declining the case prior to meeting with the attorney. Most experts know, after receiving just a small amount of information, whether they are qualified to testify. This eliminates unnecessary time spent on meetings and depositions and allows the attorney to find a more appropriate expert in a timely manner.

Scheduling

Most businesspersons these days carry a day planner or personal digital assistant (PDA) — better known as a handheld personal computer (PC) — in order to keep up with their schedules and appointments. PDAs have a calendar as well as tasks and notes, and they can interface with many computer programs, such as Word®, Excel®, ACT®, and Outlook®. These assistants are synchronized with the computer so that the appointments and schedules are available while on the road or while using the desktop computer. Although a day planner or a calendar can be relatively inexpensive, PDAs and PCs can be costly.

In addition, some programs on the computer can be of assistance in scheduling. An example is Microsoft® Outlook®. Not only can it be the e-mail client, but it also has a calendar, notes, tasks, and the ability to schedule meetings with other users of the program. It will notify the user if a conflict occurs in scheduling and the user can set it to provide reminders of important appointments as well as tasks.

Questioning the attorney about the length of time of a meeting or deposition will assist the expert in scheduling. Multiple meetings and other activities can be scheduled in one day if time allotted for each is known. However, caution should be used in scheduling multiple appointments; if one appointment is thrown behind, it will throw all appointments for that day off, making the expert late for one or several appointments.

Excellent organizational skills are vital in building the expert's business. Scheduling and ensuring that appointments are kept require diligence. Missing a deadline or a deposition will result in a scarcity of business for the expert as word spreads that he or she is unreliable.

Timekeeping

An expert's time is billed in what is termed "billable hours." Each minute spent on a case is money made by the expert and must be accounted for by some type of timekeeping system. Keeping track of time spent reviewing records and research can be difficult for the beginner. Accurate time records

are essential in order to be credible and obtain repeat business. The expert does not want to overcharge or undercharge for time; several timekeeping methods can be used.

Most accounting software has built-in timers that can assist the LNC expert in timekeeping. However, these timers are not infallible, usually due to operator error. For example, the user must start and end the timer. Obviously, time starts when the expert is performing an activity related to the case and ends when the activity is finished, or the expert takes a break or needs to do something related to another case. The user's responsibility is to ensure that the timer is started and stopped appropriately. As stated earlier, for beginners, and sometimes for experienced experts, this may be difficult to remember. It is best to work on only one case at a time to get in the habit of using these timers.

An example of software used by numerous businesses is QuickBooks Pro® (www.quickbooks.com). It is an excellent accounting and billing software; however, it is relatively expensive and might not be an option for beginning businesses.

A billing sheet is another method used by experts. A table can provide start and end times and type of activity. This method requires diligence in remembering to write down the times. In addition, the log may be easily forgotten unless the expert keeps it on the desk, by the computer, or at other workstations. However, photocopying or printing the billing sheet on colored paper may make it easier to locate in a file. The expert must decide which timekeeping system is best and most reliable. Chapter 7 provides more suggestions.

Developing Forms and Checklists

During the course of business, the expert can develop many forms and checklists, which are used to organize the expert and ensure that record keeping is precise. What exactly the expert needs will not be apparent until that first case is received. However, one of the most important forms to be developed should be the client intake form, which will be revised as the expert takes on more cases and gets more experienced. Information that should be included on the intake form was discussed earlier in the chapter.

Another form used by experts is an assessment of opinions made by opposing counsel experts. The expert develops a list of points found while reviewing the information given, especially depositions. If the opposing expert contradicts any of those points, the LNC expert can then make notes about what that expert found. A word of caution is needed, however. Some attorneys do not want experts writing down any information that may be

discoverable; it exposes their case and provides fodder for opposing counsel during deposition.

Ensuring that the expert has appropriate and accurate information as a basis for opinion is done with a checklist. Based on the expert's experience in the clinical arena, the expert develops a checklist of items that should be in the records. While reviewing the information and records sent by the attorney, the expert uses the checklist to ensure that the proper information has been obtained and can make a list of relevant information for the attorney to requisition for the expert. The expert cannot render an opinion until all pertinent information has been gathered.

The American Association of Legal Nurse Consultants has developed a book of sample forms, guidelines, and checklists, *Growing Your Practice: Resources and Tools for Legal Nurse Consultants*; this is available for purchase from the Website, www.aalnc.org, and provides valuable tools for nurse experts. In addition, many experienced experts are willing to share any checklists and/or forms that they may have developed in order to assist the new expert in getting started.

Document Security and Confidentiality

Many attorneys want to know that the documents and records sent to the expert are going to be kept confidential. Confidentiality is "keeping private all information provided by the client or acquired from sources before, during, and after the course of the professional relationship" (Capella and Aumman 2003, p. 232). This applies also to any information obtained from medical record review (Capella and Aumman 2003). When the expert contracts with the attorney, the attorney–client privilege should be protected at all costs. The expert should not discuss any findings of the case with anyone not associated with the case. To do so breaches ethical responsibilities of the expert. It might also jeopardize the case.

An act that was enacted to ensure protection of health information was the Health Insurance Portability and Accountability Act of 1996 (HIPAA; Health and Human Services 2003). It provides for privacy while not allowing interference with patient access to information or quality of health care (Health and Human Services). HIPAA standards require more stringent confidentiality where medical records are concerned. With this in mind, the expert should keep information sent by the attorney in a safeguarded place within the office, preferably in a locked storage area. At the very least, the information should be stored out of sight of anyone that might come into the office.

When the case is finished, what does the expert do with the documents related to the case? Obviously, the documents cannot go in the expert's garbage because of privileged and confidential information. The client should be given the opportunity to request that the expert return or dispose of the records. After receiving this direction in writing, the expert should obtain the client's express delivery service account number if records are to be returned. If the client directs disposal of the documents, the best method is shredding. Shredding services may come to the LNC's location on demand or at regular intervals.

Managing Clients

For a beginner expert, taking that first step to speak with an attorney may be intimidating and extremely difficult. However, the expert should remember that the attorney is an expert in his field just as the expert is experienced and skilled in his or hers. The LNC expert has skills that the attorney needs. The expert should refrain from offering opinions on a case until he or she has all the facts and is retained by the attorney. In some instances, people had no idea that they had been listed as experts on a case until they were served with a subpoena (Poynter 1997). Their summons stemmed from a telephone call from the attorney, who asked questions regarding the case, thus making the person an expert. Some attorneys also list experts whom they have contacted just to keep the other side busy looking for experts (Poynter). Many experts require a retainer when they discover that an attorney has identified them as an expert on a case without their permission.

The expert does not need to agree with everything that the attorney says or does; the expert should stand by his or her opinions, regardless of whether the attorney is amenable to it. If the expert cannot work with the attorney, then the relationship should be terminated. This is especially true if the expert is pushed into unfamiliar territory by the attorney. The expert's opinions are based on experience in a particular area. If the issues of the case are outside that area of expertise, the attorney should not force the expert to offer opinions in that area. It is the expert's reputation that will be damaged. The expert should never be fearful to voice concerns to the client.

Some attorneys may need an opinion in a matter of days. These rush requests usually are due to unforeseen circumstances. If the expert feels comfortable and has the time available, rush requests are acceptable. However, the expert will want to be compensated for pushing regular work aside to work on this case. It is reasonable to charge the attorney more for these rush requests; in fact, rush requests should be incorporated into the contract (see Figure 11.1). How much more the expert should charge depends on the

time allotted. With only a short amount of time to review records and do research, the expert may want to charge double the normal fee. The adage, "time is money," applies to rush requests and the expert must decide just how much that time is worth.

Reports

After reviewing the case and forming an opinion, the expert should discuss the case with the attorney. The initial discussion will generally take place over the telephone, allowing the attorney and the expert to ask questions and discuss the expert's opinions (Edel et al. 2003). The expert should also provide the attorney a verbal list of strengths and weaknesses of the case (Poynter).

A report should be written only when requested by an attorney. If the expert cannot support the opinion of the attorney, a report may be requested to satisfy the client that the case been reviewed. In other situations, a report is not requested because it may need to be supplied to opposing counsel, although all of the discovery might not be complete. The attorney will know the deadlines and is the ultimate decision maker about preparing reports. The expert should then ask the attorney about a specific format for the written report, including whether any state rules concern expert reports (Edel et al. 2003).

The content is based on the expert's professional opinion and will be defined as such (Miller et al. 2003). Generally, the report should contain (Edel et al. 2003):

- A list of documents that were reviewed
- A brief summary of the events that led up to the injury
- A description of the standard of care pertinent to the incident
- The opinion of whether the standard of care was breached and how it was breached in the case

Research should support the opinion and how this relates to the issues in the case. If several breaches in the standard of care have occurred, each standard should be individually addressed. As mentioned earlier, the AALNC's publication, *Growing Your Practice: Resources and Tools for Legal Nurse Consultants,* is an excellent resource for sample reports. Once the novice expert has been retained on several cases, he or she can then develop a format.

Deposition and Trial

Preparation for the deposition and trial components is the most important aspect of presenting evidence in a case. Depositions are sworn testimony, recorded by a court reporter (Miller et al. 2003). If the attorney does not request a meeting prior to the first deposition, the expert needs to insist on one. Meeting for a half hour or hour before the deposition over breakfast, for instance, is not enough time (Poynter 1997). The novice expert needs to know the types of questions that opposing counsel is going to ask to ensure being better prepared to answer them. If the attorney has not sent deposition transcripts of the other experts in the case, it is a good idea to ask for them; this will give a concept of the questions that opposing counsel may ask and the kind of information for which he is looking. They are also used to ascertain if more analysis of the issues is needed by the expert. Reanalysis may change the expert's opinion and thus invalidate this testimony. The expert should notify the attorney immediately if this occurs.

The expert should ensure that all invoices have been paid before reserving a date for deposition or trial. Many experts require prepayment for trial preparation or appearance based on an estimate of the hours involved. Overestimating the hours results in a refund of the unused portion of the attorney's money (if the trial appearance is billed on an hourly vs. flat daily rate). Underestimation of the hours can lead to collection problems, particularly if the client loses the case.

Conclusion

The use of expert witnesses and their roles are constantly growing and developing. The business of expert witnessing takes commitment and determination — as well as honesty, credibility, and professionalism — in order to succeed. LNCs wishing to branch out into expert witnessing can receive guidance and mentorship from other LNC experts to ensure quality and practical business principles.

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