

SOUTHERN ILLINOIS UNIVERSITY  
**EDWARDSVILLE**

**INFORMATICS AND LEGAL CONSULTING: IMPORTANCE FOR THE PERIANESTHESIA NURSE**

ASPAN'S 41<sup>ST</sup> ANNUAL CONFERENCE,  
PHILADELPHIA PENNSYLVANIA

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## INFORMATICS (HEALTH)

The American Medical Informatics Association (AMIA) has defined health informatics as a scientific discipline concerned with the cognitive, information-processing and communication tasks of healthcare practice, education and research, including the information science and technology to support these tasks.

American Health Information Management Association

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## INFORMATICS (NURSING)

The American Nurse Association defines nursing informatics as: “ the specialty that integrates nursing science with multiple information and analytical sciences to identify, define, manage, and communicate data, information, knowledge, and wisdom in nursing practice.”

**(DIKW) Hierarchy**  
Data – Information – Knowledge – Wisdom

*ANA Scope and Standards of Practice Nursing Informatics*

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## NURSING INFORMATICS ROLES / FUNCTIONAL AREAS

|   |                         |
|---|-------------------------|
| Administration / Leadership             | Policy Development      |
| System Analysis and Design              | Genomics                |
| Compliance & Integrity Management       | Information Management  |
| Consultation                            | Quality Improvement     |
| Coordination, Facilitation, Integration | Research and Evaluation |
| System Development                      | Safety and Security     |
| Education / Training                    |                         |

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## DEFINITION: LEGAL NURSE CONSULTING

The application of knowledge acquired during the course of professional nursing education, training, and standard of care, causation, damages and other medically related issues in cases or claims. It is the application of additional knowledge acquired through education and experience regarding applicable legal standards and/or strategy to the evaluation of medical-legal cases or claims. It involves critical analysis of healthcare records and medical literature, relevant legal documents and other information pertinent to the evaluation and resolution of cases or claims. Legal nurse consulting results in the development of case-specific work products and opinions for use by legal professionals or agencies handling cases or claims.

AALNC Brochure, 2018

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## ROLE: LEGAL NURSE CONSULTING

- Collecting, organizing, and analyzing healthcare records, medical literature, standards, and guidelines
- Identifying record tampering, omissions, and contradictions
- Preparing chronology and/or summary of medical events Interviewing witnesses about the medically related case or claim
- Evaluating cases for one or more of the four elements of a medically related tort claim (duty, breach of duty, damages, and causation)
- Evaluating the merit or defensibility of a medically related case or claim
- Educating attorneys and others about the clinical facts and issues in a medically related case or claim

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## ROLE: LEGAL NURSE CONSULTING

Identifying, evaluating, and conferring with expert witnesses

Serving as liaison to clients, parties, experts, and/or other witnesses

Drafting medical portions of legal documents

Collaborating with the legal team on case strategy

Assisting with the adjudication of a medical-legal case or claim

Testifying as a nurse expert or fact witness

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## DEFINITION: EXPERT NURSE WITNESS

An expert nurse has training, expertise, and experience above that of the average person. An expert nurse witness renders opinions, testifies in regard to standards of care, and explains medical terms and procedures.

Ruiz-Contreras, 2005

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## ROLE: EXPERT NURSE WITNESS

A nurse expert may be asked to do all the things a legal nurse consultant does.

In court an expert nurse may be asked to describe standards of care and provide opinions regarding the care provided by other nurses.

Statements should be unbiased and based on medical records and testimonies of those involved.

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## DESIRED QUALIFICATIONS (OPINIONS FROM OVER 10 YEARS OF EXPERIENCE)

### Defense

*Certification:* Not advised

*Education:* Case and client dependent. In some cases, a baccalaureate degree will suffice in others a terminal degree is preferred.

*Experience:* Should have experience in the area of the case at the time of the case. Instructors that teach clinical is sufficient but employment within the area at the right time is preferred. Some clients prefer experts to have employment at an academic institution.

*Publications:* Articles and book chapters related to specific aspect of a case.

*Public Speaking:* Strong communication skills with super thick skin.

*Credibility Baggage:* None preferred (ex. perjury conviction)

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## DESIRED QUALIFICATIONS (OPINIONS FROM OVER 10 YEARS OF EXPERIENCE)

### Plaintiff

*Certification:* Not required but some prefer.

*Education:* Case and client dependent. In some cases, a baccalaureate degree will suffice in others a terminal degree is preferred.

*Experience:* Case dependent (less client dependent). The clients are generally individuals as opposed to large health care organizations. Should have experience in the area of the case at the time of the case. Instructors that teach clinical is sufficient but employment within the area at the right time is preferred.

*Publications:* Articles and book chapters related to specific aspect of a case.

*Public Speaking:* Strong communication skills with thick skin.

*Credibility Baggage:* None preferred (ex. perjury conviction)

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## HOW TO GET STARTED

- Decide on where to focus your education/certification & experience
- Take a public speaking course
- Develop your CV
- Create a Web Page (good and bad)
- Solicitation letters (good and bad)
- Expert Witness Directories (good and bad)
- Speak to expert witnesses and let them know your area of expertise and that you are interested in working on cases in your field.

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## YOUR FIRST CASE

- Provide your current CV and fee schedule
- Ensure all requested work is completed prior to the deadline.
- Phone calls – do not provide opinions via email (writing) unless specifically asked.

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## FEE SCHEDULE

Frank Lyerla PhD RN  
Legal Nurse Consultant – Testifying Nurse Expert  
Fee Schedule

Fee Schedule for the nursing expert services rendered by **Frank Lyerla PhD, RN**, for all services listed below as they may apply to each individual case.

- \*Receipt and independent review of all medical records at \$160.00/hr.
- \*Any phone discussion of any findings related to a medical record at \$160.00/hr.
- \*Any written documentation regarding findings at \$160.00/hr.
- \*Any transportation, mailings, or copying at a rate of \$50.00/hr.
- \*Preparation time for all Depositions and/or Trial Court, at a rate of \$160.00/hr.
- \*Deposition or expert witness testimony at a rate of \$300.00/hr. (minimum of 2 hours).
- \*Trial testimony at a rate of \$400.00/hr. (minimum of 2 hours).
- \*Transportation and Lodging Accommodations (as necessary)

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## CV

CURRICULUM VITAE  
Frank Lyerla, PhD, RN, CAHIMS, FHIMSS

### PERSONAL DATA

School of Nursing Box 1066  
Southern Illinois University Edwardsville  
Edwardsville, IL 62026  
Office Number: AH 3334  
Office Phone: 618/650-5974  
Office Fax: 618/650-2522 E-mail:  
flyerla@siue.edu

Home address & phone  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXXXX

### EDUCATION HISTORY

| Degree | Year | Institution                                  | Location         | Major             |
|--------|------|--|------------------|-------------------|
| PhD    | 2007 | St. Louis University                         | St. Louis, MO    | Nursing           |
| MSN    | 1999 | Southern Illinois University<br>Edwardsville | Edwardsville, IL | Nursing Education |
| B SN   | 1995 | Southern Illinois University<br>Edwardsville | Edwardsville, IL | Nursing           |

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## CV

### LICENSES & CERTIFICATION

### EMPLOYMENT HISTORY

### PUBLICATIONS

*Refereed Journal Articles, Textbook Contributions, Manuscript Reviewer, Editorial Board: PhD, Doctoral, and Master's Final Projects (students)*

### PRESENTATIONS

### RESEARCH GRANTS / FELLOWSHIPS

### HONORS AND AWARDS

### MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

### REGIONAL/NATIONAL/INTERNATIONAL COMMITTEES

### EMPLOYMENT COMMITTEES

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## PREPARING FOR COURT

Prepare a list of all cases, depositions, number of times in court, and if you were siding with the prosecution or defense

Provide documents as requested (email communications, literature used to formulate opinions)

Bring notes from document review

Bring current Curriculum Vitae (CV)

Bring any articles or textbooks you used to formulate an opinion

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## DEFINITIONS

➤ **Negligence:** a general term that denotes conduct lacking in due care; Carelessness; and a deviation from the standard of care that a reasonable person would use in a particular set of circumstances. (lack of intent – leaving a sponge in a surgical wound)

➤ **Malpractice:** the failure of a professional person to act in accordance with the prevailing professional standards, or failure to foresee consequences that a professional person, having the necessary skills and education, should foresee. (intent present – discharging a compromised patient)

<https://health.mo.gov/living/lpha/phnursing/negligence.php>

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## CLAIMS (NEGLIGENCE / MALPRACTICE)

- Provider-patient relationship must exist
- Provision of care fell below the accepted standard of care
- Care provider's actions or lack of action caused patient harm
- Damages resulted to the patient

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## HOW A CLAIM PROCEEDS

- Claims fall under state jurisdiction which means the processing may vary from state to state.
- Plaintiffs and defendants are named as well as the negligent behaviors and injuries sustained when the suit is filed.
- Healthcare records are obtained and reviewed and marked as exhibits.
- Depositions of the people involved are taken. Some cases go on for several years after the claim is filed and new information is uncovered requiring additional depositions. Expert witnesses are usually deposed last.
- If the case is not settled out of court the case goes to trial.

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## PLAINTIFF'S CASE (PROVE THE FOLLOWING)

- Legal duty to care for the patient.
- Breach in that duty occurred (negligence) – standard of care must be known to prove it was breached.
- A patient injury occurred as a result of negligence.
- A causal relationship must be established between the negligence and the injury. The patient injury was caused by the negligence.

Reising, D. L., & Allen, P. N. (2007). Protecting yourself from malpractice claims. *American Nurse Today*, 2(2), 39-44.

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## COMMON MALPRACTICE CLAIMS

- Failure to institute a fall protocol
- Failure to follow proper procedure for a specific skill (administering medications)
- Failure to use equipment in a responsible manner (antithrombotic stockings)
- Failure to communicate
- Failure to document
- Failure to assess / monitor
- Improper delegation

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## CASE STUDIES

- **Case 1: Pregnant patient with a fever has an order for discharge**
- **Case 2: EMR automatically assigns fall risk category**
- **Case 3: Failure to have proper policies and procedures in place and failure to follow policies and procedures (sepsis)**

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## POST-TEST QUESTION 1

Which of the following represents *wisdom* as found within the DIKW hierarchy?

- The nurse collects blood pressure, temperature and heart rate and documents in the EMR.
- The nurse recognizes presenting signs of an allergic reaction and therefore, stops the IV medication and calls the physician.
- The nurse concludes that the patient is dehydrated after reviewing the patients' vital signs and lab work.
- The nurse records a patient's blood pressure, compares it to normal and interprets it as low.

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## POST-TEST QUESTION 2

Which of the following is accurate regarding a testifying nurse expert?

- a. Must have a PhD
- b. Must have certification as a legal nurse consultant
- c. Renders opinions on the standards of care within nursing
- d. Is an expert within all subfields of nursing

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## POST-TEST QUESTION 3

True or False

A testifying nurse expert should discuss opinions regarding a case over the phone rather than typing them up in an email?

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## REFERENCES

American Health Information Management Association. Defining the Basics of Health Informatics for HIM Professionals.  
<https://library.ahima.org/doc?oid=107443#.YfmKkvhMG70>

American Nurses Association (2014). *Nursing Informatics: Scope and Standard of Practice (2<sup>nd</sup> edition)*. Washington, DC: American Nurses Association Publishing. ISBN-13: 978-1-55810-579-9.

American Association of Legal Nurse Consultants (Brochure). What is a Legal Nurse Consultant.  
[file:///C:/Users/flyer/AppData/Local/Temp/What%20is%20an%20LNC%20Brochure\\_Final.pdf](file:///C:/Users/flyer/AppData/Local/Temp/What%20is%20an%20LNC%20Brochure_Final.pdf)

Ruiz-Contreras, A. (2005). The nurse as an expert witness. *Advanced Emergency Nursing Journal*, 27(1), 27-35.

Missouri Department of Health and Senior Services. Negligence and Malpractice.  
<https://health.mo.gov/living/lpha/phnursing/negligence.php>

Reising, D. L., & Allen, P. N. (2007). Protecting yourself from malpractice claims. *American Nurse Today*, 2(2), 39-44.

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## QUESTIONS



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