

# Malpractice

## In-House Law Firm Legal Nurse Role: 30 Year Perspective

Elizabeth Zorn, RN, BSN, LNCC

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*Our success as individuals and as a specialty nursing practice depends upon the quality of our services. This article reviews the general role of the in-house LNC and important skills, knowledge, and attributes, and answers some common questions about in-house LNC work.*



## INTRODUCTION

The term *in-house LNC* refers to an LNC who is a law firm employee, in contrast to a self-employed LNC consultant. How law firms use in-house LNCs varies widely by geographical location, urban vs. rural setting, volume of med-legal claims, and their awareness of the contributions skilled LNCs bring to high-quality legal work.

Firms managing medical legal claims in Rochester NY have used in-house LNC services for over 30 years. As one of the first in-house LNCs in our area, I see more LNCs hired, and have seen their assignments evolve from fairly perfunctory tasks to those requiring critical analysis. The more LNCs have demonstrated their value to attorneys over the years, the more firms see the advantage to hiring them.

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## LNC ROLE: MEDICAL MALPRACTICE CASES

In **plaintiff firms**, LNCs are integrally involved in screening and investigating potential medical malpractice claims in collaboration with attorneys. If a case is likely meritorious and economically viable, the plaintiff LNC participates in the initial client interview to obtain the client's medical history and version of the facts, and prepares a list of all relevant medical records to obtain.

### Pre-suit Investigation

The LNC organizes and reviews the records and pertinent medical literature. The LNC then prepares a memo

regarding case strengths and weaknesses, including recommendations whether to obtain an expert review. The memo includes the basis for conclusions and support from the medical literature. LNCs also provide attorneys with relevant anatomical drawings and procedure descriptions to help them understand the medical issues.

### Expert Review

If the plaintiff attorney wishes to proceed to expert review, the LNC identifies and vets potential clinical experts from a variety of sources: personal medical and legal contacts, individuals and services that find experts for a fee, expert directories, and cold calls to physicians published in a relevant specialty or practicing at academic medical centers. LNCs often develop and maintain a database of potential expert witnesses.

The LNC prepares a package of materials for the retained expert with an organized copy of the medical records. The package may also include a summary of the facts, a list of questions for the expert to consider or the LNC's chronology. However, this is always at the attorney's discretion, because anything sent to an expert is potentially discoverable by opposing counsel.

After the expert has completed the review, the LNC participates in the discussion with the expert to review the expert's analysis of the case merits. If the conference is recorded, the LNC proofreads the transcript for accuracy. If a case is declined following expert review, the LNC may draft or edit the rejection letter. Cases the attorney deems meritorious based upon discussion with the expert(s) are put into suit by filing a Complaint along with some type of Affidavit of Merit. The LNC assists the plaintiff attorney to identify the named defendants.

## Litigation

**Defense firms** receive their medical malpractice cases from malpractice liability insurance carriers. The defense firm files an Answer to the Complaint and serves the plaintiff firm with discovery demands. Defense LNCs may assist with preparing these legal documents. Plaintiff's counsel must provide the defense with a list of hospitalizations and medical providers and either copies of the records or authorizations so the defense firm can obtain their own copies.

At this point, plaintiff's counsel must submit either interrogatory answers or bills of particulars, in which the claimed allegations of negligence and resulting harm are set forth in detail. The plaintiff LNC may assist the attorney to draft the medical portions of this document; the defense LNC reviews plaintiff's completed document, reporting back to the defense attorney whether the alleged claims and injuries are consistent with medical documentation. The defense LNC also assists the attorney to respond to plaintiff's requests for production of documents, such as defendant's complete medical record for the plaintiff.

The defense LNC is integrally involved in getting expert reviews, using the same process described above for the plaintiff LNC. Both plaintiff and defense LNCs conduct background and other searches pertaining to the parties and experts. They also prepare summaries or chronologies, incorporating relevant medical records excerpts.

### Next Step: Depositions

Both plaintiff and defense LNCs assist attorneys to prepare for depositions of plaintiffs, defendants, and typically some non-party witnesses<sup>1</sup>, attending depositions as requested. In states with expert witness discovery, the LNC assists the attorney to prepare for depositions of

1. A witness who is not a party to the lawsuit.



their own and opposing experts. At some firms, the LNC prepares a list of relevant deposition questions. The LNC ensures the attorney has all relevant medical records before depositions and understands the medical issues.

### **Discovery: Ongoing**

Plaintiff LNCs keep abreast of the client's medical status, periodically updating the client's medical records. Defense LNCs make note of any

Both plaintiff and defense LNCs review these, analyzing them in the context of the case issues.

After depositions, both plaintiff and defense LNCs may coordinate further work with experts based upon additional information revealed during depositions, forwarding experts copies of the relevant transcripts and arranging phone conferences or meetings to discuss their opinions.

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additional providers found in medical records or mentioned by the plaintiff at deposition. Both sides usually obtain records from the plaintiff's primary care physician going back at least 10-15 years before the alleged malpractice to get a sense for the client's baseline health, especially pre-existing conditions. It is also important to know whether there is anything in the records which might affect the client's credibility or lead to a defense that the plaintiff is partially responsible for any adverse event or complication, such as failure to undergo a recommended course of treatment.

After depositions, LNCs conduct a more in-depth medical literature search as the issues become more focused. For standard of care research, this includes peer-reviewed journal articles, excerpts from authoritative medical textbooks and clinical guidelines from professional organizations. If the defendant is a hospital, plaintiff's counsel serves a formal discovery demand for its relevant policies and procedures based on the LNC's work to identify them.

If defense counsel requests an IME (independent medical exam) of the plaintiff, the plaintiff LNC may attend this exam, providing the attorney with a written summary of what occurred at the exam: examiner's questions and client's answers, description of the physical exam, and the time involved in each. Some LNCs are asked to do audio or video recordings of IMEs (if permitted by state law) and summarize the significant findings and events for the attorney.

Both plaintiff and defense LNCs assist their attorneys to evaluate deposition testimony and reports of the opposing side's experts. In states in which the identity of experts is not revealed before trial (and thus there are no depositions of experts), LNCs for both sides review and analyze opposing sides' Expert Witness Disclosures that set forth the general qualifications of the experts and the basis for their opinions, but do not reveal their identities.

LNCs participate in regular meetings with firm attorneys to review the status

of all pending medical malpractice cases. Also, some defense attorneys and their LNCs meet regularly with certain clients, for example, representatives of the insurance company, to review the status of all cases they are handling for that client. Defense LNCs also may draft or edit periodic written case status reports for their clients.

Plaintiff LNCs may draft a demand letter summarizing liability, causation, and damages. The defense LNC reviews plaintiff's demand letter to provide an analysis of the case strengths and weaknesses, and the defendants' likely exposure if they proceed to trial.

### **Case Resolution**

LNCs assist their attorneys to prepare for trial, mediation, or arbitration. Depending on the needs of the attorney, this may involve selecting demonstrative evidence or making charts and timelines. In addition, the LNC may be asked to attend key parts of trial, such as the testimony of the opposing medical experts.

Before trial, LNCs may assist the attorney with a focus group, a mock trial in which participants from the community are paid to listen to a shortened version of the case and then deliberate as a group about the merits of the claim. This gives attorneys insight into issues they may not have even considered, allowing them to better prepare for trial.

### **LNC Role: Other Personal Injury Cases**

With some exceptions, LNCs are rarely concerned with the liability aspects of auto, slip and fall, drug and medical device, labor law, or toxic tort cases. However, they will summarize injuries resulting from the alleged negligence, including whether there was aggravation of a pre-existing condition or whether any of the alleged injuries are likely solely related to a pre-existing condition and not the result of the negligence at issue.

They will use the same process as in the medical malpractice cases: identification, organization, review and summary of the relevant medical records; drafting medical portions of certain legal documents; analyzing injuries and keeping up with the plaintiff's current medical condition and treatment; attending IMEs; and assisting the attorney to prepare for depositions and trial.

For mass tort claims, the LNC might assist with the medical portions of any required court documents, such as the Plaintiff Profile Form<sup>2</sup> or interrogatories. Also, the LNC may conduct medical literature searches related to the drug, device or toxic substance involved in products liability cases and toxic tort claims.

### **In-House LNC Skills and Knowledge**

Aspiring in-house LNCs must develop the following:

- *Good analytical skills*, including the ability to set forth opinions logically and coherently.
- *Excellent reading and writing skills*. LNCs spend a good portion of time reading and writing. You must be able to prepare succinct medical records summaries, informative medical literature summaries, properly constructed correspondence, medical portions of legal documents, and persuasive case analysis summaries. Documents must contain proper spelling, grammar and good sentence structure. If writing is not your strength, take a legal or other writing course.
- *Good organizational skills and ability to prioritize*. The LNC in a litigation firm must keep track of tremendous amounts of information for many open cases, each with large volumes of medical records and numerous

pending projects. You must maintain frequent contact with the managing attorneys regarding the procedural status of each case, maintain a list of "to do" projects, and prioritize projects based upon impending deadlines (i.e., depositions, responsive legal pleadings, or trial).

- *Effective communication and teaching skills*. Once you have completed your research or analysis, you need to communicate your findings to the attorney verbally and in writing. You may have to develop other teaching aids related to the medical issues in a case (e.g., anatomical drawings, an acronym or definition list, or step-by-step description of a surgical procedure). You will have to tailor your teaching to the learner, with new associates typically needing more basic information than a partner. Never assume that even the most experienced attorney knows everything; check for feedback as you progress.
- *Strong computer skills* including proficiency in the firm's word processing program, software for chronologies and time lines (such as Case Map), and legal case management programs such as Needles or Prolaw. LNCs need familiarity with Adobe Acrobat and managing digital medical records and imaging. If you are not familiar with these, take classes to learn the basics.
- *Effective Internet search skills* for medical literature searches, obtaining hard copies of journal articles and medical textbooks, locating current contact information for medical providers, and doing background checks of defendant physicians and experts. Searching medical literature is an art – the more time you spend doing it, the more proficient you will become.

- *General working knowledge of state statutes, rules, and regulations* about medical malpractice, product liability, and other personal injury cases. This includes knowledge of the applicable statutes of limitations (SOL) for different types of cases, the serious injury threshold in some states related to auto injuries, and what is compensable in a wrongful death matter.
- *Knowledge of applicable ethical standards* in the state version of ABA's Model Rules of Professional Conduct, especially about confidentiality, a lawyer's responsibility to prevent the unauthorized practice of law, and an attorney's delegation of tasks to non-attorneys, including in-house LNCs. Legally, in-house LNCs practice under the supervision of attorneys and the firm is vicariously liable for the acts of its in-house LNCs, other employees, and its contract LNCs.

### **In-House LNC Attributes**

Important attributes for successful in-house practice include:

- *Ability to work independently with minimal supervision and direction*. However, never hesitate to ask questions or seek guidance when uncertain.
- *Good interpersonal, problem-solving, and conflict-resolution skills*. In-house LNCs work with a range of personalities (some difficult), sometimes under tight deadlines and pressure from attorneys with their own pressures to meet deadlines and achieve a favorable resolution for their clients.
- *Intellectual curiosity about legal standards and case strategy*. This knowledge is acquired over time working on actual medical legal cases.

2. The Plaintiff Profile Form (also known as the Plaintiff Fact Sheet) is a Court-approved form completed by plaintiff's counsel setting forth detailed information about the plaintiff. It is commonly used in mass tort drug, medical device, and toxic tort claims.



- *Strong work ethic* and willingness to accept responsibility for seeing projects through to their conclusion.
- *Willingness to solicit regular constructive feedback* from the firm's attorneys regarding the quality of your LNC services.
- *Dedication to the mission* of the work being done at the firm.

## EDUCATIONAL AND CLINICAL BACKGROUND

Although each firm sets its own criteria for the desired LNC qualifications and credentials, a minimum of a bachelor's degree in nursing is often preferred with at least five years prior clinical experience. The LNC must assist with all types of medical legal cases the firm handles, so broad-based experience in clinical specialties with working knowledge about many body systems and pathologic conditions is necessary to meet the demands of in-house LNC work. These are most often ICU, trauma, emergency, medical surgical, and obstetric nursing. If the firm has more than one LNC, they will often hire LNCs with different clinical backgrounds.

## LNC VS. PARALEGAL ROLE

Job titles, roles and responsibilities of firm employees vary from firm to firm and ultimately, are decided by the partnership of each firm. Nurses employed by law firms may be called legal nurse consultants, nurse consultants, nurse paralegals, nurse legal assistants, medical legal consultants, nurse investigators or just plain paralegal, among others. In addition, a nurse called a "nurse paralegal" at one firm may have exactly the same responsibilities as a nurse whose title is "legal nurse consultant" at another firm. Thus, a job title alone doesn't infer anything about a given in-house LNC role.

Some paralegals take paralegal or general litigation classes before applying

for their first paralegal job. Paralegals handle many of the non-medical-related tasks, but may manage the medical records in those cases involving less complex injuries, especially if there are not enough nurse hours to assign an LNC to every case.

Nurses often command salaries higher than paralegals due to their background and knowledge; and, LNCs generally have different roles and responsibilities. LNCs typically get involved in projects that are medically-complex and require medical knowledge. In addition, more experienced LNCs get involved in higher level tasks such preparing a case analysis document, discussing case strategy with the attorney or conducting extensive medical literature searches.

## COMMON QUESTIONS ABOUT IN-HOUSE LNC JOBS

### What should an LNC do to become invaluable as an in-house LNC?

- Most important, take initiative to learn the skills necessary to give good advice and produce high quality work products. Strong writing and analytical skills are especially important because the fewer revisions an attorney must make to a written document you draft, the more valuable you are to him or her.
- Tailor work products to the attorney's legal experience and medical knowledge.
- Tailor work products to the particular medical and legal issues in a case, avoiding boilerplate work products.
- Strive to think of new ways to assist the attorney.
- Demonstrate flexibility.
- Anticipate what needs to be done in a case before the attorney even approaches you about doing a project.
- Be open and honest in your opinions, even if you think the attorney will disagree with you. Law is an adversarial profession and you must be

comfortable debating issues. Sometimes an LNC is most valuable to the attorney when playing devil's advocate or articulating case weaknesses so the attorney can formulate the best approach. This is a higher level skill that is acquired over time with experience, especially as the LNC becomes more familiar with analyzing medical issues in the context of the applicable legal standards.

- Remember you have a unique body of knowledge very valuable to the attorney's delivery of legal services.
- If you don't know the answer to something offhand, convey that you will do the research and get back to the attorney.

### What are typical salary and benefits packages of in-house LNCs?

Most full time in-house jobs are salaried, exempt, meaning no overtime pay. Base salaries vary with the clinical and legal experience of the LNC, the economics of the firm, how much the firm values LNC contributions, and to some extent, the job category of the position (LNC vs. paralegal). In my area, where the legal community has been using in-house LNCs for over 30 years, the average base salary for a full time, experienced in-house LNC is about \$70,000. Bonuses, if any, are typically merit based and may also depend upon firm profitability in a particular year.

LNC benefits packages may include:

- Health insurance premiums (in full or in part)
- Group life insurance premiums
- Disability insurance
- Parking
- Laptop computer
- Private office
- Online data bases for medical literature searches



- Payment of professional dues, licenses & certifications
- 401K programs
- Profit-sharing
- Educational expenses
- Sick, vacation and personal time (paid time off)

For more detailed information regarding LNC compensation see AALNC's 2011 Salary Survey Report.

### **Is it possible to work clinically and work part time in a law firm?**

Yes, but nurses who work in plaintiff firms must avoid potential conflicts of interest related to cases against their employer. Conflicts of interest affect attorneys and their ability to continue

representing a client should opposing counsel move to preclude representation based upon a conflict of interest. Any potential concerns about this should be discussed with the attorneys at your firm.

### **Do full time in-house LNCs typically work 40 hours per week?**

Most full-time salaried LNCs work an average of 40-45 hours per week, unless cases go to trial, at which time all members of the litigation team typically work extra hours. LNCs who consistently work over 45 hours per week are usually rewarded for this by firms with a bonus system.

### **I know an in-house LNC who lost her full time job when an attorney who did a lot of medical**

### **malpractice cases left the firm. How can an LNC assure job security?**

Job security as an in-house LNC is related to the competence of the LNC and the ability of the firm to maintain enough medical legal cases to justify the cost of an employee. Your friend's situation was probably out of her control. However, this outcome can be mitigated by working with multiple attorneys in the firm. Also, if one leaves and takes cases to another firm, you could explore the possibility of moving with that attorney.

### **Do in-house LNCs need their own liability insurance?**

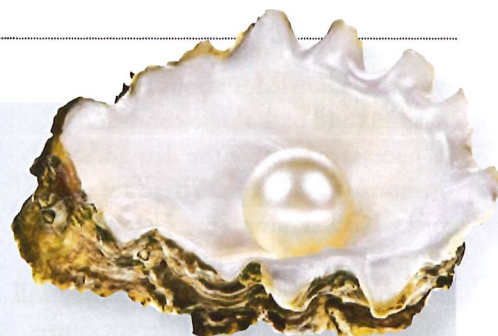
No. The firm is liable for the acts of its employees acting within the scope

## *Presidential Pearls*

### **INTERVIEWING FOR AN IN-HOUSE POSITION**

- A.** Learn about the firm ahead of time via an Internet search and the Martindale Hubbell web site.
- B.** Come with lots of questions for the attorney or other personnel who will be interviewing you. This allows you to have some control over the interview.
- C.** Your approach will vary with whether the firm is hiring an LNC for the first time or has used LNCs in the past.
  - 1.** *If the firm has used LNCs in the past, ask what their expectations are regarding the role and responsibilities. Does the LNC have secretarial support? Is there a written job description for the LNC? Are there ways the role could be expanded to help attorneys more? Is there a team philosophy? Is there a firm document outlining team member responsibility? Are there firm protocols for managing different types of cases?*
  - 2.** *If the firm has never used LNCs in the past, ask how the LNC will be used. Be prepared to offer your own thoughts about how an LNC can assist the firm in their delivery of legal services.*
- D.** Actively indicate the reasons for your interest in the position at the firm. Highlight your strengths (critical thinking, reading and writing, interpersonal) and prior personal achievements. Bring samples of your medical legal case work, especially those that highlight your analytical ability. If you have never worked on a legal case before, bring another writing sample, such as a research paper for a course.
- E.** Ask for a business card from the interviewer and follow up with a thank you note reiterating your interest in the job.
- F.** Finally, be patient and persistent. Getting a position in a law firm may take a good deal of research and follow-through. Perseverance may be your best attribute in this process. In some cases, it's just a matter of being in the right place at the right time.

**Elizabeth Zorn, Past President, AALNCP**





of their employment. Law firms have professional liability insurance in the event they are sued for legal malpractice arising out of the conduct of a partner or employee.

### **How does an in-house LNC manage the competing demands of multiple attorneys?**

The key is to stay well organized. Keep a priority list of pending projects for all attorneys that includes deadlines. At the end of each week, have a plan for what you hope to accomplish the next week. At our firm, the nurses meet with each attorney once a month to review the status of all their cases, including ongoing task delegation. If you get last-minute requests that will be difficult to complete, or should two attorneys need work done at the same time, get the attorneys (or the managing partner) involved to help sort out priorities.

### **What are some typical job responsibilities of the in-house LNC that might differ from an independent LNC?**

The biggest difference is that in-house LNCs typically are involved in every aspect of a case, from its inception to conclusion, whereas contract LNCs are hired to work on specific projects for a case. Also, in-house LNCs have more frequent contact with attorneys and their clients, and more responsibility for assisting attorneys to move their cases forward procedurally. Many in-house LNCs have a greater depth of understanding regarding the applicable legal standards and are more likely to engage in debate with the attorneys about case strategy.

### **What are the benefits of working in-house?**

The primary benefit of working in-house is a reliable income and associated benefits, which can be significant. In addition, working in-house is by far the best and fastest way of learning the whole range of behind-the-scenes LNC

work, including more complex tasks like case analysis. Daily mentoring with attorneys and other LNCs allows you to learn how to analyze medical issues more effectively in the context of the applicable legal standards. Working in-house also gives you a chance to be involved in a case from beginning to end, making the work challenging and intellectually stimulating. In-house LNCs often have regular contact with the attorneys' clients, affording rewarding opportunities to teach and serve as a liaison between the attorney and the client. Finally, LNC work requires fostering trust in your abilities as an LNC and providing work products and advice adapted to the skills, knowledge, needs, and preferences of the attorney. This is easier when working with the same group of in-house attorneys, as opposed to the necessity of continually working with new attorney clients as an independent LNC.

### **What are the drawbacks of working in-house?**

The most commonly cited reasons for choosing to work independently are the ability to work at home and maintain a flexible work schedule. Most in-house LNCs must work at the firm during their scheduled work hours, with some firms allowing their LNCs to work at home occasionally. Although working in-house lends itself to more scheduling flexibility than in the clinical setting, most in-house LNCs work regularly scheduled work hours, Monday through Friday. However, evening and weekend work may be necessary when cases go to trial.

Full time in-house LNCs juggle numerous work projects for many cases. They also frequently have multiple attorneys competing for their time. This can be overwhelming unless the LNC finds an effective means of prioritizing projects. In-house LNCs may occasionally have to work with attorneys or support staff with difficult personalities or problematic work habits. This can be especially

challenging if this interferes with the LNC's productivity.

## **SUMMARY**

In-house LNCs are integral to the provision of high-quality legal services. In-house LNC work is directed by the firms' attorneys under established firm protocols for legal case management. Each firm sets its own criteria for its LNCs' desired educational, clinical and legal backgrounds. LNC responsibilities in a law firm vary with type of case, the skills and experience of the LNC, the manner in which the firm utilizes LNC support and whether the firm does primarily plaintiff or defense work. In-house LNC work is deeply fulfilling and requires a specific set of skills and personal attributes, and knowledge to effectively analyze medical issues in the context of the applicable legal standards.

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**Elizabeth Zorn RN, BSN, LNCC** has worked as a legal nurse consultant since 1985, initially for a defense firm and, since 1995, for Faraci Lange, a plaintiff law firm in Rochester, NY. She has been involved as an AALNC author, editor, committee/task force chairperson and member, and lecturer over the past eight years. She has been board certified as an LNCC since 2002. In 2006, Beth co-founded LNCExchange ([www.LNCExchange.com](http://www.LNCExchange.com)), a medical-legal listserv. Since 2010, Beth has served on the AALNC Board of Directors and is currently serving as Immediate Past President. She can be contacted at 585-325-5150 or [elzorn@faraci.com](mailto:elzorn@faraci.com).

