

## Consulting vs. testifying experts:

### *What's the difference, and do you really need both?*

According to the American Judges Association, 97 percent of lawsuits don't go to trial. The vast majority of cases, then, don't need testifying experts – but they can realize significant cost savings with a consulting expert who can analyze the claim and guide strategy.

Those remaining 3 percent that do proceed to trial? They benefit from the consulting expert who streamlines records and prioritizes issues. This saves considerable time for any testifying expert – and expense for the litigants.

U.S. companies spent \$22.8 billion on litigation in 2020, according to *Statista Research and Analysis*. A sizable portion of those dollars came from medical cases, including lawsuits for malpractice, personal injury, product liability, workers' compensation and others. So it's no surprise that companies are attempting to rein in the high costs of legal fees and expenses. Attorneys, claims adjusters, insurers, senior living operators, and general counsel for hospitals and health systems are feeling the pressure to tighten their belts and find new ways to litigate medical cases or even avoid trial altogether, reducing their overall legal expense.

One simple yet effective way to manage litigation costs is through the use of legal nurses as “consulting” experts in medical-legal claims. Both legal nurse consultants and testifying medical experts can be invaluable to a legal team, but each has a different role to play in the litigation process—and arguably, both may not be needed to settle the matter at hand, resulting in total claim savings. As the clinical member of the legal team, tenured nurse consultants bring invaluable medical expertise and strategy to a case to help efficiently and effectively value a claim and move it towards a positive resolution, many times without the assistance of a higher cost testifying expert.

I use Med Law Advisory to help me evaluate liability and that allows me to place a value on cases very quickly. Our clients like how aggressive we are with early evaluation and resolution because it obviates the need for testifying experts and saves them time and valuable resources.

**C. Crider**, Defense Attorney

### Legal nurse consultants – the “consulting” expert

A legal nurse consultant is a licensed nurse who assists with the investigation of medical litigation matters. Typically, a legal nurse consultant has several years of hands-on clinical expertise, strong communication skills, and a natural ability to educate others on medical issues. The legal nurse serving as a consulting expert has specific training in the nuances of medical-legal claims and established practice working within the legal industry. These professionals offer their knowledge and talents at a cost-effective rate substantially lower than an attorney or testifying expert rate.

In the most successful relationships, “consulting” experts partner with the legal team early on to quickly assess the claim and inform litigation strategy. Legal nurse consultants use data-driven processes, standard of care evaluation, and clinical judgment to identify the issues that truly matter and help the legal team determine the best path to claim resolution. If and when needed, they facilitate work with a “testifying” expert who supports the established theories of liability.

### “Consulting” experts provide specialized services, including:



**Medical  
Record Review**



**Evaluate  
The Standard  
Of Care**



**Determine  
The Merits  
Of The Case**



**Develop  
Strategy**



**Work With A  
“Testifying”  
Expert**

### “Testifying” expert

A “testifying” expert is a licensed professional with direct clinical experience in a medical specialty. The expert can review medical records, provide an objective opinion on the standard of care and testify at deposition or trial on medically-related litigation matters. Any written report prepared by the testifying expert is subject to discovery by the opposing party, and therefore, has limited use in the ongoing development of case strategy.

The primary reason to use a “testifying” expert is to secure testimony on the standard of care, needed in the event a claim proceeds to trial. The expert forms an opinion on whether the medical provider in the lawsuit used the skill, knowledge, and care required and acted as another reasonable provider would under similar circumstances. The expert must defend the opinion under rigorous cross-examination. An expert can also be used to provide testimony on complex medical conditions. The testifying expert is often retained to perform the same services as a consulting nurse, but at a higher rate—often, twice the rate of a legal nursing consultant.

### Conclusion

Attorneys, claims adjusters, insurers, and general counsel for hospitals and health systems should consider using a “consulting” nurse expert as a strategic, cost-effective way to get a medical professional involved at the onset of a lawsuit. Then, if and when necessary, rely upon “testifying” experts to provide expert witness testimony at deposition and trial. Using experienced legal nurse consultants as “consulting” experts is a smart decision for the bottom line in medical-legal claims—often yielding litigation savings in the tens of thousands.