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Nurse Expert Witness: What is it Like?

Diane Krasner

After 20 years of nursing, Dr. Diane Krasner became an LNC specializing in wound care cases. She shares what she's learned during her 15 years of LNC work, and her journey provides invaluable advice and guidelines for both newcomers to LNC work and experienced practitioners.

Check out this episode of Legal Nurse Podcast to hear what Diane has to say about

- The importance of being an expert in your field before starting an LNC practice
- The necessity of not providing fodder for opposing lawyers through what you publish on your website—or anywhere
- Why you need to set a conscious balance between nursing and non-nursing employment
- That you may spend much more time in taking courses and other activities to stay constantly on top of your profession than you do in work directly related to your LNC profession
- How academic work, research, and related activities can contribute greatly to your expertise

Patricia: Hi. This is Pat Iyer with Legal Nurse Podcast. And I have with me today Diane Krasner, who I have known for many years. Diane and I have taught some courses together, and I invited her to be a guest on our LNC conference in October. Diane is an expert witness with deep, deep experience in wound care, medical device-related pressure injuries, incontinence care. This has been her area of expertise for at least 35 years. Diane, welcome to the show.

Diane: Thank you, Pat. It's a pleasure to be with you and your viewers today.

Patricia: Tell our listeners about how you got started as an expert witness.

Diane: When I was living in Baltimore, in the late eighties, a colleague of mine gave my name to a local attorney to review a case. And I reviewed a few cases and decided that I hated it and wasn't involved with it again, except that I'd get calls from attorneys. And I would give their names to a colleague of mine, Karen Lou Kennedy-Evans of the Kennedy terminal ulcer fame.

And then, in 2005, I had moved to York by that time, and I was working at a nursing home, and of course, hearing all kinds of stories about nursing home pressure ulcer litigation. And I got a call from an attorney and thought, “Well, maybe with my new Ph.D. brain, I would like this, and maybe I should give it a try again.” So, I reviewed my first case, I liked it. And then I took a LNC course, and got certified as an LNC. And then I started very slow. I did that one case in 2005. And then the next year, I did about five cases. And I just really enjoyed the challenge and the intellectual stimulation and felt like I was doing important work. And so, the rest is history. It's 15 years now that I've been doing expert work.

Patricia: When you went from that one case to five cases, was the same attorney who gave you the first case involved in giving you the next five, or were there different attorneys for that next batch of cases?

Diane: No, they were all different attorneys. And, you know, one of the things that I realize now that I didn't realize then was that I was very lucky to have a hot topic with a lot of litigation. And since I lecture and I publish in the field, attorneys can find my name. So, I haven't had a problem getting business, which is a real blessing. And in fact, I've had to give cases to other nurses that I'm mentoring because there's too much litigation going on in this area.

Patricia: When you went into this, were you thinking that you would do only plaintiff cases or only defense cases?

Diane: Well, you know, when I started, I didn't know anything. To be honest, I didn't even know the difference between a plaintiff and defense when I went to that course, which was extremely useful for me. And I think that many people, especially people who are doing expert work, need to take some kind of basic LNC course, so that they understand the language and know the terminology.

And so, my LNC course was taught by a nurse attorney, and it was a long time ago, so I hadn't discovered the AALNC or SEAK at that point. There was a nurse attorney who was doing classes in Philly. So, I just went to a four-day class and learned a lot of things. And one of the things that she suggested is that you try to do a balance between plaintiff and defense work, which I did very successfully for the first

few years that I did expert work, but then because I got more and more referrals, I started doing more and more defense work.

Patricia: And just to clarify terms for people who are not familiar with the names of the organizations that you just went through, AALNC is the American Association of Legal Nurse Consultants. SEAK is an organization that is run by a group of attorneys who provide education for a variety of expert witnesses on the business of being an expert, as well as on testifying skills. And they are based in Massachusetts and used to do live programs, before the pandemic, in a variety of places around the country.

Diane: Correct. Yes.

Patricia: So, it sounds to me like from what you just said that you're doing more defense work at this point, is that the correct interpretation?

Diane: I am doing more defense work. And in part, I'm getting referrals from one ... I do a good job with one attorney, and so they give my name to another attorney either in their firm or in another office in their firm, or I'm testifying at a deposition that involves several different codefendants, and another codefendant attorney might hear me testify and then calls me up. So, I kind of end up getting my referrals from one defense attorney to another. I would certainly take a plaintiff case if a plaintiff attorney calls me because I believe in my heart now, after doing this for 15 years, that it is critically important that both sides have credible, educated experts, because the system is predicated on that.

So, both sides need good experts. I'm also trying to pace myself with the number of cases I take, but it's difficult. The work comes in sporadically, and so it's very difficult to pace yourself. But I'm trying to only accept one new case a month so that I don't get overwhelmed with all the work that comes after you've accepted a case, because then documents come during discovery that you have to do, and expert reports come, and now depositions by Zoom. And I haven't yet been to a trial, but my two trials that are scheduled for next year are now scheduled to be Zoom trials.

Patricia: So, are you saying that you have not had the opportunity yet to testify in a courtroom since you started?

Diane: No. No, I've testified in a courtroom, but not since COVID.

Patricia: Okay. I was thinking, wow, how lucky can you be to not have to testify in a courthouse in all those 15 years.

Diane: Yeah. But the data is kind of interesting. I keep a loose track of my number of cases. And it was actually my friend, Karen Kennedy, who then when I decided I was going to start doing cases and not send them to her, I called her up one day, and I said, "Karen, I'm not sending you any more cases, I'm going to start trying to do them myself." And she had long experience as an expert witness. So she mentored me, and taught me a very important thing, which is to number your cases, and number the boxes of the files that you have, if you have hard copies, so that you can keep track of all the cases.

And I remember thinking at the time, how would I ever, ever forget these first six cases that I did. But of course, over the years, as I took on more cases, and especially in wound care, pressure ulcer cases, they all start merging together because, not all, but most of them are a very similar kind of pattern: an elderly patient who gets very sick and gets a pressure ulcer. So that's been very helpful to me to number the cases. I know that I've reviewed about 250 cases over the 15 years, and of those cases, I've only been deposed 22 times, and I've only been to trial, I think it's seven or eight times. That's because in this particular area, and I don't know other areas as well, but there's a big push to either take these cases to arbitration, or mediation, or to try to settle them.

Patricia: Interesting. You have had a depth of experience that many experts have not and in a concentrated area. In other words, I testified for 25 years as a medical surgical expert witness, but my cases were varied from falls, to medication errors, to treatment errors, to miscommunication, to people who ran through the window and fell onto the roof of the hospital, to a variety of bizarre situations that occurred.

In looking at your expertise, I think it's important that the viewer understand when you say you've got credentials, tell our listeners about the kind of credentials that you've developed over the years for reviewing cases. And, along with that, after people hear about your background, then they think, "Well, I could never be an expert

witness, because I haven't done everything that Diane has done.” So, give us a little bit of filling in the gaps for us.

Diane: I believe that to serve as an expert, especially in one of these very focused cases like wound care, that you truly need to be an expert, that you shouldn't be a beginner in the field, because they're so complicated, and there's so much depth to these wound pressure ulcer cases.

But I've been a wound nurse for 41 years, I've been a wound expert for 35 years. And it was only 15 years ago that I started doing expert work, so I practiced for about 20 years before that. And for me, the big advantage to that is that I know my opinions; nobody can sway me in my opinions unless there's new evidence that comes along and changes things. But I'm pretty clear on my position, when I review a case about standards of care and standards of practice, and that makes it easier for me when I write my expert reports when I testify.

I started my career in ancient history, and got a Bachelor's and Master's in Egyptology, which doesn't have anything to do with what I do now, except that that's where I learned writing skills, which have been so important for critical thinking and writing that you have to do when you're writing expert reports and trying to explain yourself. So, it wasn't all for naught. Then I went on to nursing school.

And as I got into the wound care specialty, I realized that if I was going to advance in our field that I needed to get an advanced degree. So, I went back and got a Master's in Education, first, which was a very useful degree, but it didn't count for nursing. So, then I had to go back and get a Master's in Nursing, and finally got a PhD. And I did my PhD work in wound pain.

And that put me into the arena of palliative wound care. So even though I started as a wound ostomy continence nurse and got certified as a wound ostomy continence nurse by the WOCN Society, I became, through the years, more and more focused on just the wound part of our practice, not that I can't change an ostomy pouch or do incontinence, but my focus is wound care.

And as I matured as an expert, I narrowed my focus down to just doing wound cases. So, if I get a request, for example, to review a

case involving an ostomy issue, I refer that to one of my colleagues who is a ostomy subspecialist, because I really consider myself just a wound subspecialist. So, I have great admiration for people like you, Pat, who can look at the big picture and can opine on different areas. But my personal practice has become so limited as a wound specialist, that, this just happened recently to me, that there was a case where staffing issues were involved, and was a long-term care case so that there were survey issues involved that I knew I couldn't opine on, because even though I worked in long-term care for seven years, I didn't have anything to do with surveys, and I didn't have anything to do with staffing. So, I said to the attorney, "You need to get somebody else to address those issues."

Patricia: It sounds to me like you got started with wound care issues, and you stayed in that lane. And you had a friend who was there as a support and a person that you were referring cases to in the beginning. What do you think are ways that nurses today could get attention from attorneys? If they wished to take cases as an expert witness, what are some ways that you can think of that would be helpful for them to know, so that they could get work in if they wanted to review cases as a testifying expert?

Diane: Well, I think that finding a preceptor or mentor is important. You know, I met you, Pat, when I went to my very first AALNC meeting in 2006. And I met lots of people there that I learned a ton from, and could have connected with to get cases from LNCs who had their own business looking for experts, had I chosen to do that. I didn't, but I had the most important experience of meeting you and learning about your books and reading many of your books.

And by the way, one of a great starting point for LNCs is to read your book about becoming an LNC, and your book about how to be a successful expert. (Find Pat's books at this link: <http://LNC.tips/startandgrowLNCbiz>). So then my colleague, friend and mentor, Karen Kennedy, who really, to this day, continues to mentor me in wound care expert witness work, Karen and I went together to a SEAK conference. And we'd read books that SEAK had, many of which were very helpful.

And as I went along, like when I had my first expert report to write, I bought the book from SEAK on how to write an expert report. And

when I had my first deposition, I bought the book on how to be successful at deposition. The conferences are wonderful, but they are unbelievably expensive. So, Karen and I went after a couple years, after we sort of had a foundation where we thought we could get our money's worth and learn a lot. And we did. And we made contacts there. So, those are networking opportunities, as are many of your programs, where budding experts can make contacts. The other thing is to have a website, potentially. And I do get a fair number of referrals from my website.

Patricia: Has anyone ever taken you to task or in a deposition and referred to things on your website, to try to impeach your opinion?

Diane: Yes, all the time. They always manage to find lectures. My website is primarily a website that has my academic work on there, related to pain, related to my textbook, and related to the skin changes at life's end panel. And since end of life pressure injury is a big topic in wound care cases, and often quite contentious, they'll download stuff from my website and then bring it in to the deposition or to testimony and actually quote me.

Early in my career, I was trying to be helpful to my colleagues and I wrote some posters for our national meetings on how to give a successful deposition and 10 sticky wickets for wound care. And the lawyers would use that all the time. So I stopped doing that kind of stuff, because it was just too stressful when they deposed me and asked me those questions, even though I was trying to be a good educator, and take the lessons that I was learning from the cases that I reviewed and bring them back to my wound colleagues. That was my goal. But it just provided too much fodder for the opposing attorneys to go after me.

Patricia: I can imagine the dialogue, Diane. It's one of the reasons why, now that I haven't been in a courtroom for five years, I think all of my cases that I testified on for, especially as the expert fact witness, they've all resolved. Just now I'm beginning to feel comfortable teaching people about being an expert witness. But if you do it while you're actively practicing, then there's an insinuation that you are a professional expert, you know all the tricks, you're experienced, and you do this all the time, so that must make you a prostitute in the legal world, your opinion can be purchased, is what that term means if

you're listening to this, and you say, "What? An expert witness prostitute, what are you talking about?"

So, yes, it can come back and backfire on you, quite unintentionally, when you're trying to be helpful. Do you ever encounter people who hear you're an expert witness, and they may ask you questions that indicate that they've got some misconceptions or myths about what it's like to be an expert?

Diane: Yeah. I would say that the number one myth that I get is that I would be able to be an expert in all kinds of cases, across all settings, and across all ideologies and complications and so on. I mean most of my colleagues, when I say I'm doing expert work, they have no idea what I'm talking about. And most of my wound colleagues, and even people at the college and stuff, they've never heard of legal nurse consulting as a profession, even nurses. So that's the biggest surprise for me, is that my own colleagues don't know anything about this aspect of nursing practice.

So, I have to explain to people that in these very complicated and very expensive wound cases where you might have five codefendants, the hospital, several nursing homes, the outpatient wound center, that you might have four, five different wound-related experts just on that case. Like you'll have a wound nurse like me, you'll have a wound physician, you may have a dietitian, you may have a physical therapist, and then you might have, if let's say it's a long-term care case, you might have a long-term care nurse expert.

So, in these very expensive, complicated cases, you might have five experts to cover all the wound issues, and that really surprises people. But there's big money involved, you know, the settlements are in the multiple millions. I testified, a few years ago, at a case in Colorado that the award was \$300,000 plus an additional \$3 million for pain and suffering. And there are cases, \$5 million, \$10 million cases now. So, there's a lot of money at stake.

Patricia: There certainly is. Have you ever been told, "Oh Diane, you're charging all of these hundred dollars an hour; this must be easy work." Has anyone ever approached you with stars in their eyes and said, "Oh, I want to be making that kind of money, too. It sounds like it's lucrative."

Diane: Well, yeah. Now, hourly fees look enormous, but you work for your money. And you must have ongoing expertise. That requires you to do a lot of work on the outside that you're not paid for in order to keep up with the literature, and the latest trends, and the standards of care, and so on. So, I still must do all my professional learning, and now webinars. So, yes, on the surface, it seems like a lot of money, but there are a lot of hidden costs, and there's a lot of time that you spend working that you're not paid for.

Patricia: That's a great point. And I think that's an invisible point for most people who are not focused on the fact that there is so much time required to maintain your expertise. And it's such a great investment of time, because without that investment and involvement in your professional associations, your opinions would be less firm, and you'd be less credible as an expert. The expert who pretends to be a jack of all trades and a master of none is the one who's going to get in trouble during cross examination when the attorney is probing the expert about direct knowledge or direct first-hand experience with the issues involved in the case.

Diane: Well, this has happened several times, I remember the first time that an attorney started asking me questions about how much money I made, how much rent do I pay for my office, what are my expenses. I was new at being deposed. I looked at my retaining attorney, and he said, "You have to answer those questions."

So, then I got better about keeping track of what my income and expenses were, and so on. And it's been pretty consistent over the last decade, as I've done this work, that about 80% of my time is involved in my professional academic work, and only about 20% of my time is involved in my expert work. But 80% of my income comes from my expert work and only 20% of my income comes from my academic and other work, because many of the things that I do, speaking, writing, and so on, I'm not paid for. Right? It's academic work, or I might get a small honorarium, but I'm not really paid for that work. So, I kind of view it that my legal work is subsidizing my expert work. I mean, yeah, my expert work is subsidizing my academic work.

Patricia: Right, right. I got it. Yeah, that is one of life's ironies, isn't it? To be an expert to get the high dollars, you must do the academic work. And

then the attorneys are subsidizing the academic work that keeps you current. And you do have to be prepared to have those numbers when you're asked. I can remember being deposed in Washington, DC. And the attorney said to me, "All right, I want to know what percentage of your income comes from your expert work and how much that is per year." And I looked at the attorney who had hired me and I said, "Do I have to answer those questions?" And he said, "Yes." I said, "Well, we don't have to answer them in New Jersey." And he said, "Pat, you're not in New Jersey." "Oh, right. Okay." Dorothy, you're not in Kansas anymore.

Diane: But that reminds me of something else that's important. You know, there were things that because I came to this with no legal background, we didn't have any lawyers in my family or anything, there were a lot of things that I didn't know at the beginning. But one of the things I quickly learned is that states have different requirements for experts. And so, you should know what states you qualify in, and perhaps there are states you don't qualify in.

And when I made the decision to, after I'd been working at the nursing home for seven years, I decided that I wanted to spend the rest of my career in teaching in academics, because that's really what I was educated for. And so, I went into part-time teaching. And when I went to part-time teaching, I knew that I would not qualify to be an expert in certain states. It's maybe 12 states that have strict requirements about how much time you're practicing, or you must be teaching at an accredited school of nursing 50% of the time.

So, if I didn't make that 50% of my time number, I wasn't going to be able to testify in those states. So, I carefully weighed it and made the conscious decision just to not testify in those states where I know that I don't meet the expert requirements. I like to take cases in my own state because logistically, it's just the easiest, and Pennsylvania is pretty much a hotbed right now for wound cases. So, I've got plenty of work here. And we don't have strict requirements.

Patricia: And no cap also on damages.

Diane: Which is why we have lots of cases here.

Patricia: Yes. Yes, yes, yes. Yes. As the attorneys say, God bless Pennsylvania, the great Commonwealth of Pennsylvania. But if you're very defense-minded, and you're listening to Diane and I laugh, keep in mind that if plaintiff attorneys didn't take cases, there would be no work for defense attorneys. So, the legal system benefits from having the need for experts on both sides.

Diane: Absolutely.

Patricia: And for well qualified people who can, as I'm sure you have done, Diane, who can look at a case and say, "I'm sorry," if it's not defensible, as a case, or for a plaintiff, "I'm sorry, this case is not valid. This shouldn't be pursued. The nurses met the standard of care, it was a bad outcome." You need people on both sides who are going to be able to shed light on a case to avoid the attorneys and families spending hundreds of thousands of dollars taking a case all the way into the courthouse.

Diane: Correct. It's vitally important to be honest and upfront with an attorney about your opinions. And good attorneys, on either side, are happy when you tell them ... or should be happy. Most of them are, that the reasons why this case is not going to go very far. Or where the serious problems are in a case. And they want to know that. That's important for them to understand. And a lot of times it's subtle stuff that only a wound expert would see in a wound case. So that's the important part of what I can do for the attorney who hires me, is to be honest, real upfront. And only several times have I had attorneys get seriously angry with me and hang up on me and not understand why I couldn't support a case.

Patricia: Do you have any last tips for the person who's listening to this who is an expert witness or is considering becoming an expert witness?

Diane: Well, I think my best recommendations are to read, get educated about expert witnessing, read books like Pat's book, like SEAK books to help you, find a mentor, somebody who's going to stick with you, to help you get the big picture, and then who can give you advice along the way. Because no matter how experienced you are, issues are going to come up that you've never confronted before and you're not sure how to handle them.

I've called Pat occasionally for some crisis that I didn't know how to resolve, or one of my attorney friends that I've worked with a lot that I feel comfortable chatting with about sticky situations when they come up. And just be prepared to be challenged and stretched by all the different circumstances that come about. That's what I love about this work, it's constantly challenging, it opens my eyes, it makes me reconsider practice issues in new ways that I probably wouldn't have if I didn't get to review a case and see what kind of problems are arising in practice.

Having the opportunity to review these cases gives me insight that I wouldn't have any other way if I was just practicing in one little place on my own. So I get a good sense of practice across the continuum of care and see things in all kinds of different settings that has been invaluable to me in understanding the wound care landscape.

Patricia: How can our listeners find out more about you and the services that you offer?

Diane: On my website, I have a bio, so you can read about my career. And then I have resources that you can download about my work on wound pain, and my work on skin changes at life's end, and my textbook. There's also a link to the Why Wound Care? website, which I co-chair. And if you go to the Why Wound Care? website, you can actually, under Resources, download or read online a copy of my book, *Chronic Wound Care*, which is written for generalists and is a good starting point if you're looking for wound care information.

Patricia: We know whywoundcare.com?

Diane: Why Wound Care's website is yeah, whywoundcare.com, and my own website is DianeLKrasner.com.

Patricia: All right, so that's D-I-A-N-E-L-K-R-A-S-N-E-R.com. DianeLKrasner.com. Perfect.

Diane: Right.

Patricia: All right. Well, thank you, Diane, so much for sharing some of your insights about being an expert witness for the last 15 years. You've covered how you got into the profession. Initially, you were referring cases to a colleague, and then one day you decided that you would

take on a case yourself. And that first case led to five cases the following year, from a variety of attorneys.

You've been focused specifically on wound care cases in your career and have turfed or referred other types of wound ostomy continence cases to other individuals who have a higher focus on the areas that you don't cover. And of the 250 cases that you've reviewed, you've had 22 depositions and with seven or eight trials, so your numbers certainly show that the vast majority of your cases have resulted in settlements, or potentially some of them being dropped by the plaintiff attorney.

You haven't been to trial in the new virtual world, but you've got some trials scheduled for next year, so that will be fascinating to find out what that experience is like to testify. And I think you've also emphasized to our listeners the importance of knowing the regulations in the state where the case originated, to make sure that you are qualified as an expert before you take that on. Some states have no requirements for who is an expert, some require active clinical practice within X number of years of the case. Some of them say you can't work more than 20% of the time as an expert, some state that you have to, if you're teaching, it has to be an accredited faculty position.

There are all different variations from state to state. One thing I found when I reviewed cases was to talk to the attorney who was approaching me about the case and say, "Well, let's make sure that I'm going to qualify in your state before we go any further." Or you can also look up those regulations on the internet for the states to find out what the requirements are. But it's also much easier to ask the person who's approaching you, because that individual will know it right off the bat.

I think you shared with us that even though you're paid well, as an expert, it's only the surface in terms of the investment of the time that you have to put into being expert, being current in the field, knowing the standards. I know you, Diane, have been part of international groups that have looked at wound care issues, and you've contributed to that body of knowledge, which certainly is a strong point in your credibility. And all of those academic pieces, the teaching, the writing, the threshing out of opinions, that work is supported in part by the

work that you do as an expert witness. So, the two of them are connected in a very intimate way. Thank you for being part of the show. I think I've covered the highlights. And you've given our listeners a lot to think about in terms of how they can view being an expert as an expert witness.

Diane: Thank you, Pat. It was a great discussion.

Patricia: And thank you to you who is watching this show on our YouTube channel, which is Legal Nurse Business, or listening to it on our audio programs. We are on Spotify, and Apple Podcast, and a variety of other platforms. We appreciate you plugging us in and taking us with you when you go out for a walk, or you're driving in your car, or you're in the gym exercising and you're saying, "I need to listen to some podcasts while I'm taking care of my health." We appreciate you and the attention that you've given us today. And be sure to come back for our next show or next guest. Thanks so much.

Patricia: Hi. This is Pat Iyer with Legal Nurse Podcast. And I have with me, today, Susan Haibeck, who just finished doing a podcast with me. Susan is an experienced legal nurse consultant who is celebrating five years being an independent legal nurse consultant. Susan, what are some of the things that we covered in your podcast?

Susan: Hi, Pat. Thank you. We covered some of the ways to get started as the legal nurse consulting, some of the events and activities I did that helped my career. And we also talked about some of the tips and the secrets of being a legal nurse consultant.

Patricia: Perfect. You'll want to hear Susan's podcast or watch it on our YouTube channel. Susan shared a lot of wisdom. We've packed in a lot of content in this 30 minutes. And you'll be sure to want to hear what she has to say and see how it applies to your life. Thanks so much. Be sure to get Susan Haibeck's podcast. Thanks.

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