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Tips from a Nurse Attorney to LNCs Joe Flores

In this episode, Pat Iyer interviews Joe Flores, who brings his unique perspective as a nurse, a lawyer, and an LNC to the world of medical malpractice. His fascinating and invaluable insights about how lawyers and LNCS can work best together will help you in this critical area. Listen to this podcast for priceless information that will have immediate relevance to *your* business, such as:

- The effect of capping awards in malpractice suits on lawyers and LNCs in Texas?
- Improve your relationships with lawyers by understanding their passion for justice.
- An insider's detailed perspective of why a paralegal is *not* an LNC.
- The surest indication that you shouldn't work with a lawyer
- How to effectively negotiate prices with an attorney

Pat: Hi, this is Pat Iyer with *Legal Nurse Podcast* and today I have a special guest who's with me from Texas. He is a nurse, an attorney, and a nurse practitioner. His name is Joe Flores, and I met him through LinkedIn when we were connecting. And I thought his background was fascinating and I thought you would enjoy hearing from a perspective of an attorney who is looking at the law from a different perspective than attorneys who don't have a healthcare background.

Joe, welcome to the show.

Joe: Well, thank you, Pat. I really appreciate it and for all the viewers out there I want to thank you all for the opportunity to be here.

Pat: Tell us about your journey, Joe. You started off as a registered nurse, and then you became a nurse practitioner, I'm assuming that was the sequence. After a while being in nursing, you decided to go on and advance your education, or did you do it all at one time?

Joe: Pat, I got out with an Associate Degree in Nursing when I was 20 like many of us, and I had been in healthcare since high school. I got my RN early and then went on for my BSN. And while I was working toward my BSN, a couple of attorneys asked me to review some cases. I didn't know much about what they expected, but they were excellent attorneys.

I worked my way through that, and over the years right after I got my BSN, pretty much, I went through that and working in ICU for a couple of years. I honed the craft of reviewing records and providing expert testimony. And then subsequently, it went so well that it helped me put myself through FNP and law school, so six years straight of grad school. And it was a great journey, and I'm glad that I learned that skill because I probably wouldn't have been able to go through full-time law school, at least for the first year, along with the other things that I was doing. So, it's been very rewarding. It's a great journey.

Pat: That's quite a story. It sounds like your introduction to law was maybe a combination of being behind the scenes consulting, as well as doing expert witness work.

Joe: That's right. Now as many of us know that have been in legal nurse consulting for a long time, most trials don't go. You may be deposed. You may review a lot of records, get ready with your expert report, but it just doesn't go to trial, and more and more frequently that's happening. I've tried a lot of cases, but many are going to mandatory arbitration or not going. But nevertheless, the work of the LNC is very much needed because you never know when you're going to go to trial.

Pat: I can think of promises that I have been given, Joe, by clients when I was testifying as an expert who said, "This will never go to trial," and then I got that phone call that said, "This is going to trial."

Joe: That's right and that's why I say, "Never say never in the law or in nursing or healthcare because things can just change on you. And they often do when you least expect it."

Pat: Now with your background in healthcare, I'm curious as to what type of law you practice now?

Joe: I am still doing a lot of personal injury, civil law. Even though the laws in Texas changed the last 15 years or so with tort reform, there still is a great need for knowing medicine, healthcare, nursing, and the law all overlapping because of personal injury cases, pharmaceutical cases, which we're looking at. And now through the regulatory side, the administrative side, board cases, and healthcare fraud cases which are becoming more frequent, and then civil and criminal side of federal law.

So many LNCs are surprised that their skillset can be used on the administrative side of things, not just necessarily medical malpractice and negligence but PI, building up the damages model, so we can show a jury what this person needs. I'm excited to see more LNCs looking at the vocational rehab specialty.

In a nutshell, I am looking at civil, criminal, and administrative now. And that's here in Texas and on a federal level nationwide. So, it's a challenging and exciting time for our firm.

Pat: I'd like you to tell us a little bit about the tort reform in Texas because I got into legal nurse consulting when there was no cap in Texas. And there were some extraordinary Texas-style-sized verdicts that many insiders believed really killed the litigation climate or at least dramatically affected it in Texas—excessive verdicts like \$400 million for nursing home cases.

Is it viable for legal nurse consultants to work with attorneys in Texas at this point with the cap that exists, and can you share your perspective on that?

Joe: Absolutely. Many individuals worry about that, and that's a legitimate concern. Under Chapter 74 of the Texas Medical Liability Improvement Act that's under the Texas Practice Civil Remedies Code, Chapter 74, that pretty much stopped a lot of tort reform because it caps damages, the type that are special to say a nursing home patient, and they injured them. If there are non-economic damages, they're capped at \$250 per defendant, about \$500,000 total. Now you can get punitive damages, but those are also capped.

Now everybody says, "Oh my gosh, Texas; the cap is really draconian," but if you look around the nation there are same or similar

caps in about half the states. And some of the statute of limitations or time you must bring the lawsuit are limited to a year sometimes, and sometimes three. I've seen in most jurisdictions about two average.

But to answer your question, no, I think that a legal nurse consultant can do very well in Texas and I'll tell you why. Lawyers have adapted that do medical malpractice cases. And those cases, particularly the medical malpractice and nursing home cases, we've learned how to do them more economically to save money. Before when I was training and cutting my teeth in the early 2000s before tort reform really kicked in, I remember a great mentor of mine said, "Now don't come home from mediation without at least \$2 million," and that's even before. But I never saw those runaway verdicts except on pharmaceutical cases and things like that.

Those are still there, but the medical malpractice, I think, it was more, and I'll never forget. It was in the year 2002 that they were getting ready to do the legislative session. Doctors marched right across the street where I am at here by the nearly Gulf of Mexico, Nueces County. They got off a bus, about 50 doctors in lab coats, and started picketing in front of the courthouse, and I said this is going to be a big paradigm shift. Unfortunately, I see it from the nurse practitioner and the medical side. I never saw insurance rates go down like they promised, they, being the insurance company, made some bad investments at the turn of the millennium and then just said, "How are we going..."

I hate to sound jaded, but it's true. I heard the legislatures talking about it at that time we were reaching out to them, but said, "They made bad investments." They said, "How are we going to limit our exposure and how much we have to pay out?" "Well, we'll just cap damages, and we'll get the docs to do our talking for us. And when you put a doctor against a lawyer, the doctor wins with the public. there's more trust, and that's what happened.

So, the aftermath was that for many of us, we went out on our own because there was no longer the business to do medical malpractice. So, for about a year there, I freefell and I just took everything through the door. Many of us younger lawyers went there. Many that handled only exclusively medical malpractice went under, but then the system adjusted and we're still seeing medical malpractice cases. I have

participated in some over the last five years. Nursing home cases, not as much but they're making a comeback. Assisted living is there. But there are plenty of opportunities, bottom line, for those who want to practice in Texas. And, as I mentioned, now we have the federal law, qui tam whistleblowing, and DEA cases, nurse practitioners. Now with the proliferation of them, there's a lot more lawsuits and there's also a lot more opportunity to defend nurses and nurse practitioners in front of the board.

It's just a very broad question, but it's a very good one. But I thought I'd try to cover it as best I could in the amount of time we have. But I do think there are great opportunities for LNCs without a doubt here in Texas.

Pat: If you were giving advice to an LNC who is getting started and trying to build up a client base, what would you think would be the most effective ways to connect with attorneys?

Joe: I'd like to save that LNC the pain that I have been through, and that's part of the reason that I'm here, but I'm not going to go back too far. But when I was a 6-year-old newspaper boy, I learned rejection very early on. People would say, "No thanks, kid, I get it at home." I heard that about 50 times a day until I learned how to market it. And I started learning how to market by talking just like the old days, "Extra, extra, read all about it!" I'd talk about the top of the headline, "You need to see it now" that sense of urgency. Well, the same thing for LNCs.

I used to just go in there and I didn't really understand how the lawyers thought or the legal culture. Even when I started getting comfortable, I never saw it behind this lens, the optic of being a lawyer. And so, for your audience I would say this very simply: First, find out exactly what they work on. Some people work on brain trauma or TBI. I'm passionate about that. I was a nurse practitioner with a neurologist for a while and in ICU. And so, I love working on these brain trauma cases because I liken it to opening a box of eggs always checking if it's cracked. It looked great on the outside. You see these people with a TBI injury. They look like they can walk, talk, just like everybody else, but people don't understand and appreciate the trauma that they suffered.

So, that's one case. Like if you find out somebody handles those, that's really an end. That's a niche, and really doing your homework on the lawyers. But I would say it's hard to get in there with lawyers, but once you do get in there on your first case and work with them and tell them, "I'm passionate about what you do, too, and I really want to help and work on these cases," and once you find out, especially what makes them tick, their story.

Many personal injury lawyers I know have lost somebody to a car wreck, or I know one that—oh my gosh—it just breaks my heart. He did go-kart cases and his son died because of a go-kart case. It is just incredible how he can do that. And he shares his story in front of a jury, not exploiting that pain but showing that vulnerability.

And we get beyond that one-dimensional look at lawyers and say, "Hey, these guys are human too. These people get out there and advocate because they want to get their client's story across." And so, to those legal nurse consultants, that is invaluable. And when you get that foot in the door, let them know that: exactly what they do, their verdicts, and what they were. Yes, touch upon their ego a little bit, but also validate what they do.

When I started doing that, it was a watershed moment for me. I got a lot more cases. And then when I got my foot in the door, and I did a good job, just like any good LNC does, they will call you back. And they'll share your name with many other lawyers, and you're off to the races.

Pat: I think my perspective about plaintiff attorneys changed when I went to an American Trial Lawyer Association meeting early on when I first started exhibiting there. And they were talking about the garage doors that used to close all the way down to the ground and then a child was crushed under a garage door. At that time, the manufacturers didn't have that sensor device, and it was because of the plaintiff attorney handling that case that the garage door manufacturers were forced to put in that safety feature. And up to that point, I saw plaintiff attorneys from my healthcare lens of, "They're just hanging out in the hall waiting for us to make a mistake, so they can sue us." And then I began to shift.

There was another moment that I shifted which is if you remember when HIV and AIDS was first coming to this country in the 1980s. There was a woman, and I believe her name was Kimberly Bergalis, who got HIV from her dentist. And they took a video of her laying on her sofa dying, and they showed it at this American Trial Lawyers Association meeting that I was attending. And there were attorneys who were openly crying in the room, and then I got it. There was that passion to represent injured people that I began to see for the first time.

Joe: Yeah, very well said. I'm part of a group of the Trial Lawyer College that was initiated by Gerry Spence over 25 years ago. And I don't want to give away the Coca Cola formula of how they teach us to be better lawyers, but they make you look critically at yourself, and your own soul, and what makes you tick. "Why do you react the way you react?" And critically look at it and say, "If you don't know, you're not going to be able to tell the story and not be able to direct that story with witnesses and everything to your audience, the jury" and that is very compelling.

And so, we did go through a lot of painful things, all of us have, to understand why we do what we do. And that's it, totally, is I can see that's why I do what I do. In many cases I've done, the plaintiff work is seeing the most vulnerable in our society being hurt, injured, and they don't really have a voice. I think it's some of the most rewarding work that anybody can do, but I also agree with you.

It took me a while for the optics to change. When I was a nurse, I feared lawyers. I despised them. I really didn't think of myself as becoming one, and then I started working on the cases. It was a watershed moment that the nursing home had lied about how much a person ate, and they essentially starved them on purpose, and didn't feed them. Trays were stacked, yet they kept putting 100% fed, fed, fed because they didn't have the time and they didn't want to lose their jobs, so they would just say the person ate.

That was the first case I ever worked on. It was a simple case, but they document dumped on the attorney like they do frequently. And so, I had to find it over 10,000 pages of documents and I found it. And that's when I said, "this is amazing" because I'll never forget. He sent me what was the equivalent of a month's salary. And I said, "Sir, you

paid me too much. I only worked on this about five to 10 hours, let me give you some money back. And he says, "Nah, you earned it. I settled that case for x-amount, and it was a significant verdict." I mean, it would've been a significant verdict. They settled it before it went to trial, but his demand was much, much higher.

But in any event, I totally agree with you. I get it and I think that as nurses, if we learn about legal nurse consulting, we can see it from both sides. And I think we grow personally from that.

Pat: There is a persistent comment that legal nurse consultants hear from attorneys and I know you've got a take on this, which is "I've got a paralegal. Why do I need a nurse?" How would you respond to your brethren who are under the impression that legal nurse consultants are no better than paralegals?

Joe: I know from seeing it from both sides that I really, really respect paralegals. I see how they put things together, but even paralegals know on a good legal team that without that legal nurse consultant, too much gets lost. You don't see much of the medicine and the issues and the smoking guns and the defenses, as well as the armor that we put on whether you're on the defense side or the bullets that are piercing that armor in using that metaphor of finding that chink in the armor. Doing that weighs and falls squarely on the shoulders of a legal nurse consultant.

Whether you're testifying or not, you are an invaluable part of the team, and only the most inexperienced trial lawyers don't get that, especially nowadays, with the tort reform that swept the nation in many areas. We must make a dollar travel farther, and we must make our damages models skyrocket up and prove that the person has activities or daily living that's been affected. If they have a traumatic brain injury so that they cannot remember things, they might leave the oven on. They might kill themselves. Those kinds of things only nurses can see, and nurses can educate the lawyer.

So, when I talk to my brethren whether it's at a water cooler or at a dinner or at a bar function or right across the table in a war room, I tell them "Where's your expert that's a legal nurse consultant because we need this stuff reviewed right away. And not only that, but we need to know what kind of life care plan we're going to get, vocational rehab."

And they start freaking out because I tell them, "You're only selling this for soft tissue neck damage? Did the guy hit his head?" "Well, yeah, but he denied treatment." "Well, we need to send him to a neurologist. We need to see if we can do something about getting him checked out, a CAT scan, an MRI." And only a nurse can sift through all of that and say, "Yeah, that makes sense" and instead of a \$10,000 case, it's a six-figure or seven- or eight-figure case. And I think that's how we sell to lawyers.

And my share is that I tell lawyers, "Yeah, I'm a nurse." And he says, "Well, you're not an MD," and I say, "Well, if you want to pay thousands to an MD just to tell you that you don't have a case, good luck. But if you want to have a nurse tell you, "Okay, on the one side, on the other side" and really take the time holistically to tell you what matters, that's why we're invaluable. Because we are trained on a holistic model and we see things three-dimensionally. Not critical of physicians, but they tend to be more cut and drier on, "This doesn't look like a case, move on." We're trying to find and help our lawyer and that's why we're an invaluable part of the team.

Pat: Those are great points, Joe. I want to bring up something that is one of the unpleasant aspects of working with attorneys, and I know you've had some firsthand experience with this, which is having difficulty getting paid. We do the great job that we're capable of doing, and you mentioned attorneys are needing to stretch their dollars further. Well, one of the ways that some of the more unscrupulous attorneys stretch their dollars is to say, "I'm not going to pay my experts" or "I'm going to go back to my experts." And I've personally heard this, "I didn't settle the case for as much as I wanted, so therefore I'm going to all my experts and asking them to reduce the bills so that the plaintiff will get more money in her pocket" or variations of this.

Can you give us some insight? Is there any way for us to spot any red flags that might exist when the attorney is first contacting us that this person is going to be a bad payer or a slow payer or a no payer?

Joe: First, if they haggle with your price, red flag number one. If you tell them, "My consulting price is, say, \$175 an hour for a review. If I must testify, it's \$250-\$350 an hour, and a five-hour minimum for review of documents. And for testifying, an eight-hour minimum if I go to court and sit there in the hall, and the same thing for deposition

testimony. "Let me send you over my scheduling fee." If they balk at that at all, ladies and gentlemen out there, flag number one. Let's give them a break, okay. Let's see how far they go. But then if they start really haggling and lowballing you, that should be just your first sign.

And then if they say the worst, "Well, come on, you're not a doctor." Oh my gosh, run. Run from that lawyer because he's ignorant about his case. He's ignorant about his facts. He's short-sided, and he's not going to pay, and he's going to try to weasel out of it. And I've had that happen to me where the person didn't pay me, and I told you about this Pat, that he went ahead and subpoenaed me to go testify. And the opposing counsel asked, "Why are you here?" and I said, "Because he subpoenaed me and forced me to be here, but I'm going to tell the truth about the case." Wow, okay the jury just automatically reacts... And that's how you gut them, and I was only telling the truth.

I didn't mean to ruin the case. I was just telling the truth, I'm under oath. But I think the way to prevent that after that lesson learned, I get an ironclad contract, a nonrefundable retainer of half of the money upfront. And sometimes that all you see, so you want to get paid. And you can be a little cynical about it and say, "Well, if I was going to ask for two and this guy's giving me... My spider sense is creeping. I'm going to ask for a three-grand retainer and I'm going to ask him, "What kind of records are we looking at?" If they minimize the records, if they minimize the work, that's another red flag but not necessarily a killer.

I mean, attorneys are going to negotiate, right, but there's a way to do it. Like if, Pat, you tell me, "All right, five grand." I'll say, "This case is a little light. I mean, we're lucky if we get a hundred, but let's do it on the outset. Can you do it for \$3,500? I've got two other cases."

Now that's a good attorney and then you counter, "Maybe \$4,500 and you got a deal. I'll look at the others and if they're not as onerous, I might do it for a few thousand and maybe give you another discount."

That's how we deal, but not in a way that they're demeaning or condescending or saying they don't value your work. Know your worth and know what attorney you're dealing with. And when you ask for money if they start right off the bat trying to lowball you, that's a bad sign. If they're slow paying, it's best to get as much funding of it

as you can upfront. Put it in a trust and bill against it. I ask for Square, PayPal, cashier's check, or their trust account check from an IOLTA account. They start messing with that, they can get in a lot of trouble with the bar. But those few ways and get a good contract in place.

I've got some templates and I'm sure you do that we can share with our people out there that are listening, and that way they don't get burned. But that's my experience over a couple of decades, and I know you've been through a lot of things that you share every week with people. But I hope that helps a little from my perspective.

Pat: Yeah that is great advice because sometimes those red flags are obvious. Sometimes they're subtle or they're missing. And there's an underlying current of bitterness that exists in legal nurse consultants who have done great jobs for attorneys and have not been paid. There are some inexperienced legal nurse consultants who have spent way more hours than is reasonable, and they haven't gotten paid. And they're even angrier because they put in a lot of time, but some of it may have been totally unwarranted and part of the learning curve.

So, there's a lot of subjectivity to this issue, but I see periodically in the listservs that I monitor comments by people who haven't been paid. Sometimes they're just ready to throw in the towel and say, "If this is what legal nurse consulting is all about, then forget it. I don't want to be part of a profession where I do work, and I don't get paid." And I think that's part of the tragedy of losing talent from our field who have been turned off by this issue.

Joe: That's right and I say this to all my brethren, my brothers and sisters in nursing that want to get into this field, stay tuned with us right here, on your program, and I'll be delighted to share any knowledge I've got and try to give them some pointers. But, first, it's just letting the lawyer know from the get-go. If you're new to it, say, "I'm relatively new to this, but I've taken a course of study and I know how to review records. And I'm not going to waste your time or mine."

That kind of sets the stage and they say, "Well, I don't need 20 hours on a banker's box of records" and they're right. That shouldn't take more than a few hours, but what does take a lot is research and generating the work product. And sometimes, yeah, you'll look at a couple of boxes of records and I've heard it, "Well, it shouldn't take

you more than five hours to do this." Well, yeah, but you sit there and then we must do the chrono on it.

And it's just the way you negotiate and tell them, "Now if you give me a banker's box of records, that kind of factors in. It's going to be anywhere from one to five hours on that. And I'm going to have to generate a report and a chrono, and that might be a couple of more hours. But I'm not trying to milk you, and I know it's going to come out of your client's pocket ultimately, so I want to do what's right for the client as do you. But I'm going to try to give you a work product that's cost efficient."

And, yeah, I did have to in my experience have to eat a few hours when I first started. I did get stiffed a few times, but I learned how to really pick the right attorneys to work with and charge them fairly. And sometimes waive a couple of hours on there. And even on my billing I'd put no charge on a couple of things, a .5... a .15 or .25 or .5 or a quarter-hour or half-hour. And they see that and appreciate there's some things you didn't charge for.

And it's all a part of the marketing, and it comes with experience, but I tell any LNC don't give up. There are many more good attorneys out there that are going to pay you than the ones that are going to stiff you. You can't get too cynical but at the same time you've got to take the initiative to be prepared. Street smart and book smart is what I say.

Pat: I haven't heard that expression, but, boy, does that apply. You can't really be effective unless you have both pieces in place, can you?

Joe: Yeah, it's like working an ER. Yes, they teach you nursing, but they don't get you ready for ER or long-term care or when you get out there in the boots. Remember when we were all nurses, and we first started out, you might say, "Wow, I didn't sign up for this." But then as we become more experienced something wonderful happens. It's an art, as well as a science. And the same thing here. Please don't give up. We need more of you all to bring the legal field and nursing field together because we do so much for those clients that need us.

Pat: And tell our listeners how they can find out more about you and the services that you offer?

Joe: Anytime you guys want to call, please call 24 hours a day. I've got an exchange, (361) 887-8670. If you're like me, I forget a number as soon as somebody tells me so it's (361) 887-8670. But if you like flowers, Flores is flowers in Spanish. F-L-O-R-E-S and just add lawfirm.com at the end of that, Floreslawfirm.com because mostly everybody loves flowers. So, remember Floreslawfirm.com.

Pat: Excellent and be aware that there's more than one Joe Flores as an attorney in Texas because I spoke to another one when Joe and I were initially connecting. Thank you, Joe.

Joe: Yeah, I've really enjoyed our time. I wish I could share more of my experience and things like that. But I'm writing a course book and I'm trying to get it perfected. I'm not a great prolific writer like you. I've read your stuff and I love it. The passion and everything that you're posting, and I thank you for it. It's making me a better lawyer, making me a better NP. It makes me a better expert when I review other cases.

But I just want to say that I'm trying to get a course together for LNCs that are just starting out that don't want to plop down \$10,000. And I'll do it very inexpensively, but we're working on it to give it quality. It's got hyperlinks. It's going to have video in it, and I'm going to help people as best I can from the lens of a legal nurse consultant turned lawyer.

Pat: And it's a unique lens and I thank you, Joe, for sharing that perspective.

Joe: Thank you, Pat. I can't thank you enough for having me on the show. I'm honored.

Pat: And I think some of the takeaways that I've gotten from listening to Joe is that if you are working with attorneys, particularly plaintiff attorneys, look at what you can do to help flush out the damages. The jury doesn't understand what's in those medical records and the attorney often doesn't have the time, or the expertise, to get deep into the medical records, and that's where we really shine.

We should be sure when an attorney comes back to us and says, "Well, I have a paralegal who can do this" to point out the difference between being able to just read the records versus interpreting and analyzing them and knowing what's behind those records. The scenes

in the healthcare are often ones that the paralegal has no experience with. Provides valuable services for attorneys but doesn't usually have any medical background and might miss the things that would be obvious to you as a legal nurse consultant.

And I think Joe stressed very carefully and nicely the fact that we shouldn't get discouraged and bitter about attorneys who don't pay us. There are plenty who will. You've got to stand your ground and negotiate and be firm in your terms about what your payment process is. And know that the value that you bring deserves to be well compensated.

So, I think I've hit at least some of the highlights of what Joe shared and appreciate so much Joe that you've been with us. And to you the listener who's been listening to this podcast or watching this on our YouTube channel, thank you for investing your 30 minutes to be part of the show.

Joe: Thank you and I appreciate it. I look forward to maybe popping in again.

Pat: Sounds good.

Do you have lots of questions about being a legal nurse consultant? Are you wondering how to get clients, grow and manage a business, and dig into medical records? Do you feel a bit lost?

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