

The role of the nurse as expert witness: A view from the UK

Nurses in the United Kingdom may be engaged as expert witnesses to provide evidence across a range of criminal and civil cases. This paper outlines the nurse's role as an expert witness using examples from three such cases and briefly discusses professional indemnity issues as they apply in the United Kingdom.

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The nursing role in intensive care is characterised by constant assessment and rapid decision-making in a hi-tech environment. The nurse is usually the pivotal point for communication between the patient, relatives and medical/support staff. As a result, nurses may be involved in legal cases in a number of different spheres.

CASE EXAMPLES

Case A – Criminal

An experienced intensive care nurse was committed for trial accused of deliberating altering life support machinery with the intent to cause harm to patients.

A nurse was called as an expert witness. As well as providing the 'usual' expert evidence, the nurse oversaw the set-up in the courtroom of a 'typical' intensive care bed space, complete with the type of life support machinery used in the intensive care unit in question. The 'set' was erected adjacent to the jury stalls. The expert role included ensuring that alarm sounds and so forth were as authentic as possible.

Case B – Negligence

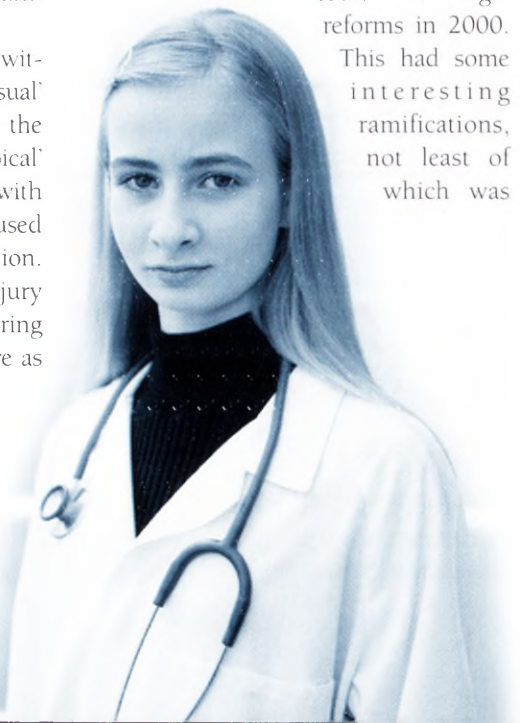
An infant's artificial breathing tube was dislodged during a routine nursing procedure. The

infant subsequently suffered a respiratory arrest and resuscitation was unsuccessful. The parents successfully sued the hospital for negligence.

Case C – Damages and Future Care Costs

A Greek national underwent spinal surgery in a private hospital in the United Kingdom. His spinal cord was permanently damaged and he was paralysed from the chest down. He will require artificial ventilation for the rest of his life.

An interesting dimension to this case was that initially the experts were jointly instructed, the result of legal reforms in 2000. This had some interesting ramifications, not least of which was



trying to recover fees and expenses from two legal firms. Shortly before the court date, the defence team expressed concern about the medical expert's report and instructed its own expert at considerable extra cost.

USUAL PRACTICE

Before providing an opinion on a specific incident, it is common to describe the context in which care was provided. For cases A and B, it was important to identify usual working practices in the intensive care units.

While the incident at the centre of a case may involve a small number of people, it may in fact reflect usual work practices in that setting, that is, the incident was 'an accident waiting to happen'.

Custom and practice issues that should be explored in cases involving a nurse include:

- Use of records
- Staffing issues
- Equipment-related issues

- Congruity between the intensive care unit's policies and procedures and national guidelines.

Use of Records

Record keeping is crucial as pre-printed observation charts are commonly used in intensive care units. Research findings have demonstrated that a blood pressure reading recorded in a chart's 1400 hours slot could have been taken up to 20 minutes after this time.¹

Nursing records may be regarded as less credible than medical records, which tend to be written contemporaneously with precise recording of time. This reflects the oral tradition of nursing versus the written tradition of medicine,² with the verbal handover between nursing staff often containing informa-

tion not found in the patient's notes. Hence, the accuracy of records must be established before they are used as evidence in court.

In case A, some patient incidents were not pursued in court because it was impossible to state from the records whether there had been any criminal activity or intent.

Staffing Issues

When a case focuses on a specific procedure, the expert should

explore the number of times that procedure has already been conducted in the intensive care unit to determine how familiar/competent the nurses should be with the procedure. This was a key issue in the United Kingdom Bristol Royal Infirmary inquiry into deaths of children following cardiac surgery.³

The procedure in case B was a

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regular part of the nursing workload, undertaken at least every four hours for each patient. However, the nurse in this case was relatively junior. It was important to review the intensive care unit's staffing levels and to assess whether new staff members were given adequate support. To achieve this, the nursing roster was compared to the intensive care unit's daily patient workload over a three-month period.

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In case B, the intensive care unit nurse manager was held partly negligent because the unit provided insufficient training and support to new nurses. Furthermore, untrained 'patient assistants' were commonly used to help the nurse change the infant's position. This practice was at odds with national guidelines for this procedure.

CONTEXT OF THE INCIDENT

The circumstances surrounding a specific incident also form part of the expert opinion. Was the unit particularly busy? Were there any staffing difficulties or unusual workload issues, such as a crisis with another patient which depleted staff resources? Where did the incident take place? These lines of enquiry allow the expert to opine about whether the standard of care was acceptable in the circumstances, taking into account usual practice.

ESTIMATING FUTURE NEEDS

In the United Kingdom, nurse experts are frequently asked to assess future nursing care needs for patients requiring long-term care. For an intensive care patient, the assessment would address the patient's respiratory, hygiene, nutrition, elimination and mobility needs, and the drugs, equip-

ment, investigations and nursing care required to meet those needs.

While the focus is on the patient's specific needs, such as the type of ventilator they require, the wider context of accommodation for the patient, their family and carers would also be addressed.

The recommendation of medical and nursing experts in case C was that the client should be mobilised in a specially adapted wheelchair with a ventilator attached. The expert role in this case was to explore all the available options, looking at costs and equipment availability and maintenance in Greece.

A balance had to be struck, enabling the client and family to feel confident with the care and equipment without recreating an intensive care unit environment in the client's home.

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Equipment considerations included:

- Correct specification of equipment.
- Maintenance schedule, including access to replacement equipment during maintenance work.
- Replacement program providing capital for new equipment in a timely manner.

A major element in the costing process is to assess the staffing levels

needed to optimally manage the client. The expert must determine which aspects of care need nursing capability, and the level, if any, of intensive care expertise required.

In case C, the expert had to identify how nursing roles operate in Greece. Interestingly, some procedures had to be costed at a medical rather than nursing level because nurses in Greece are not trained or authorised to conduct certain procedures regarded as routine nursing practice in the United Kingdom and Australia.


PROFESSIONAL INDEMNITY ISSUES

A significant difference between the United Kingdom and Australia in this context is the expectation that expert witnesses will take out indemnity insurance for their expert witness work.

In the United Kingdom, the Royal College of Nursing maintains a database of members who undertake expert witness work. Members listed on the database are provided with indemnity insurance to the tune of £1 million, provided the expert meets four criteria:

- The expert has a written contract with the solicitor.
- The expert has undertaken relevant training.
- The expert has a demonstrable level of expertise appropriate to the time of the incident.
- The expert is aware of and adheres to court guidance.

ACCESSING NURSE EXPERTS IN AUSTRALIA

The Royal College of Nursing Australia has a database of nurse experts. For further information, contact Elizabeth Foley, Director of Nursing Policy and Strategic Development, RCNA, PO Box 219, Deakin West, ACT 2600, or email elizabethf@rcna.org.au 

Endnotes: 1 R Endacott (1999) *15 Intensive and Critical Care Nursing* 10-18. 2 M Chiarella (2002) *The Legal and Professional Status of Nursing*, Churchill Livingstone, Edinburgh. 3 I Kennedy (2001) *Learning From Bristol: The Report of the Public Inquiry into Children's Heart Surgery at the Bristol Royal Infirmary 1984-1995*, HMSO, London.