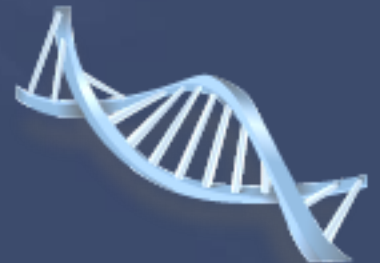


# PARKS MEDICAL-LEGAL PRESENTS:

*The important role played by legal nurse  
consultants in all phases of civil cases, with a  
Case Example*

*By Paul Parks RN, LNC*



# *A Civil Case From Start to Finish*

- ▣ In this presentation I will give an example of a civil case from start to finish.
- ▣ important steps that all civil cases follow and define important legal terminology
- ▣ And finally, important role played by legal nurse consultants in all phases of civil cases



# Case Example: Charles and Julia Doe

- ▣ Charles Doe and his wife Julia had just finished a day of shopping and were driving home. Both in their late 60s and retired, they enjoyed spending time together. In order to get to their house, they had to turn off the main highway and drive down a side street. There is only one intersection on the street, where a railroad track crosses the road. They had crossed this track hundreds of times before. Charles had noticed, in recent months, that it was growing increasingly difficult to look for trains on the track because of the thick trees that had grown up at the intersection. In order to see an oncoming train, a motorist would have to slow down, edging out onto the track and craning his head to see in both directions.

# Case Example

- ▣ On August 20 of last year, Charles and Julia crossed this track for the last time. There is no dispute about the fact that the train, owned and operated by XX Railroad Company, struck the Doe's car on the passenger side. The train was going 25 mph, and Julia was killed instantly. The car was impaled on the locomotive and pushed 200 feet down the track before it fell off to the side. Fortunately for Charles, there was a fire station less than a quarter of a mile away, and the emergency response team got to the scene in less than five minutes. They weren't able to do anything for Julia, but they used their equipment to pry Charles out of the car and then airlifted him to a nearby hospital.

# Your Time to Opine

- ▣ Charles was severely injured. He had blunt trauma to his abdomen, blood-filled lungs, brain damage, and a broken left femur. Charles was not expected to live. In fact, he was in a coma for 63 days before he awoke. Yesterday, Charles met with a local law firm and asked them to take his case. The firm is giving the case some serious consideration, but as the attorneys have done with all of their recent cases, they would like to get your opinion as a legal nurse consultant .

# Knowing Civil Law is a must

- ▣ At this point, what do you need to know about civil lawsuits so that you can give an informed opinion not just about the client's medical injuries but also about how they fit into the overall scheme of a civil case?
- ▣ Criminal cases and civil cases operate differently from one another. In order to bring a civil case, the plaintiff must have a cause of action. A *cause of action* is a legally recognized wrong that gives the injured person the right to receive compensation. On the face of the facts in this case, there doesn't seem to be much question about a cause of action. Charles was severely injured when the train struck his car. He also has a cause of action for the death of his wife.



# The LNC and Civil Law

- ▣ Charles has been injured. Does that mean that the firm will take the case? If they do, what kind of involvement will you — as a legal nurse consultant — have? Yes, they may take the case but are you well versed enough about civil law to hold a conversation? You should because the first order is understanding how law firms evaluate new cases. This is imperative to know or you will flounder, you must learn to speak act and communicate with attorney's.

# *How Law Firms Evaluate Cases*

- ▣ Think- Law firms must be choosy about their cases. Why? Because law is a business, and bad cases don't pay the bills. But what makes one case "bad" and another one "good"?
- ▣ The first consideration for an attorney who evaluates a new case is the factual basis of the claim. It would be nice to think that attorneys routinely consider justice as their first and foremost priority, but they can't. In the day-to-day world of legal practice, the first point that attorneys use to evaluate a case is facts, not fairness. The question for the attorney is this: Do the facts justify the client's claim? If they don't, the attorney should not take the case. A case where the facts don't support the client's claim is a loser. This is why proper research is so important.



# facts that make up a "good" case

- ▣ The first consideration is *liability*. Was the defendant clearly wrong? Was the defendant negligent or intentionally callous to the plaintiff? If so, the chances of succeeding at trial are very good. On the other hand, if the plaintiff and the defendant are equally at fault, the chances of recovery are slim. In some states, the *doctrine of contributory negligence* bars the plaintiff from recovering any amount of money if the defense can show that he or she was at fault in any way. Most states do not follow that model, but it is still an important consideration.

# Just The Facts

- ▣ If the plaintiff was wrong, juries probably won't award any money. Some of the other intangibles that go into determining whether or not a case is a "good" case involve the plaintiff's injuries. Does the plaintiff have any permanent disability? Is the plaintiff scarred or disfigured in some way? Juries, like anyone else, are a lot more sympathetic to people who have been disfigured than they are to someone who has a non-obvious injury.

# Facts and other Considerations

- ▣ The second aspect of the analysis is pretty hardheaded (some would even say it's cold-blooded). The second consideration is this: Even if the facts do support the claim, is there any possibility of recovery? Medical professionals and legal professionals use the term *recovery* in very different ways.
- ▣ Attorneys don't use *recovery* in that context. For them, *recovery* refers to how much money they can get from the defendant.

# Choosing the Right Case

- ▣ There are plenty of otherwise "good" cases out there that attorneys will not take. If there is no likelihood of recovering any money in a case, most attorneys will turn down the case. Taking on a case for general principles sounds good and is a nice basis for a movie plot, but in reality, an attorney can't afford to do something like that more than once or twice in his or her entire legal career.

## *Filing a Complaint*

- ▣ After reviewing Mr. Doe's extensive medical records, you — as the legal nurse consultant — recommend that there is plenty of evidence supporting his injuries. He has permanent disabilities, memory loss, and a reduced life expectancy, all of which can be traced directly to the train collision. This is what the law firm was hoping to hear. The firm already knows that XX Railroad Company has a huge insurance policy, so the evaluation has come back as a positive on both counts: There is clear liability on the facts and a strong possible recovery. The firm takes the case. What happens next?

# Investigating a Claim

- ▣ Investigating the claim rule requires that attorney's investigate any claim brought by a client. The attorneys are not allowed to rely on what the client has told them. They must launch an independent investigation to verify the claim before filing suit. Rule 11 was created in order to prevent people from using law firms as a means of harassing and intimidating others by bringing groundless suits. Part of the firm's investigation involves turning the preliminary medical records over to you, the legal nurse consultant, to confirm the basic medical testimony. The firm will also obtain a copy of the accident report and confirm the basic facts with witnesses. Once they have done those things, they are ready to write up a complaint.



# *The Complaint*

- ▣ A *complaint* sets out the details of the plaintiff's cause of action. It's just that simple.
- ▣ When the law firm writes up a complaint for its client, it is required to put in the specifics. What are the specifics? Dates, times, people, places, and things. Because it will be served on the defendant, the complaint has to put the defendant on notice of what the plaintiff is complaining about. A complaint is literally a "complaint"; it's a complaint about what someone else did. It's also a request, made to a court, to force the defendant to rectify the situation.
- ▣ I've taken the basic facts of the Doe case and created a sample complaint. I've edited out some stuff, just for the sake of space.

# Conclusion

- ▣ For the rest of: *The important role played by legal nurse consultants in all phases of civil cases, with a Case Example you can purchase the entire presentation at brainshark with the full case example as well as other medical-legal, nursing and procedural medical slides.*
- ▣ *If you don't like making power point presentations or need a topic for a bar presentation on any medical-legal subject you can contact me by email and I will make you a power point presentation even if rushed within 24 hrs.*
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*Paul Parks RN,LNC [www.parksmedicallegal.com](http://www.parksmedicallegal.com)*