

# Medical Record Fact Witness and The Use of Medical Illustration in LNC Reports:

## When a picture IS worth a thousand words

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*While many legal nurse consultants (LNCs) are familiar with the term and requirements of a fact witness, they may not be as familiar with the role and requirements of serving as a medical record fact witness. This role and using medical illustration in reports, and for jury education are explored in this article.*

### WITNESS VS. MEDICAL RECORD FACT WITNESS

A witness is usually a person with firsthand knowledge of an event, who witnessed an action or event, or was a participant in an event. The witness presents the details under oath. The facts are limited only to that person's knowledge of the matter in question.

*Serving as a medical record fact witness is an entirely different role.* This relies on experience, training, and educa-

tion as a nurse, but not in a particular clinical nursing specialty. Unlike when serving as a standards-of-care expert, being licensed and clinically active is not required.

The main role of the medical record fact witness is to organize and present the information in the record. These matters are usually complicated medical cases involving multiple surgeries, medical specialties, treatments, and permanent disabilities. Organizing

the details of injury and medical care found in voluminous records requires an experienced nurse who can identify the salient points. Many medical terms and surgeries need to be clarified in language (and sometimes illustrations) a lay person can understand. The role is to educate not only the jury but also the attorney. Verify that this is the role your attorney-client needs you to fill.

*Understand what facts the attorney wants documented.* The theory of the case may

mean the attorney wants all providers, surgeries, procedures, and treatments listed. Or pain ratings including medications and frequency may be the focus of the report. Once the assignment is clear, present the first one or two pages of the report to the attorney for review. This preview can identify any additional information needed. Revision is easier at this stage than after you have reviewed several thousand pages and completed the report. The format itself is not usually the attorney's main concern if the report is complete and easy to follow.

*Further explanation may warrant a research section.* This is an excellent opportunity to present medical illustrations, pictures, video snapshots, and pictures of the patient's injuries, scars, and treatments. If research is not your forte or you have time limitations, consider subcontracting an LNC proficient in this area to help.

The attorney may also request a section that explains potential complications arising from life-altering injuries or medical procedures. For example, a nephrectomy performed on a young adult with hypertension, with a longer life expectancy in which the remaining kidney may fail, followed by dialysis or transplant. This possibility should be considered as part of future medical treatment.

*The client's perspective on the injuries or resulting disabilities can be powerful.* A day-in-the-life video may be one way to provide this. Another is creating the story from the client's deposition, using the deponents' exact words.

*Unlike an LNC who has offered expert opinion testimony, as a medical record fact witness you have no opinions.* The information presented is based on facts from the records, depositions, and research, unlike the testimony of standards-of-care experts. When asked, "Ms. Nurse, in your opinion, ...?" your only answer is, "I have no opinion. The medical record states..." Always remember your role. You are not there to opine, despite attempts to have you speak to the contrary.

*The attorney will decide the timing of your testimony.* Testimony early in the trial educates the jury about complicated medical information in laymen's terms, so the jury understands the injuries, surgeries, complications, and potential life-long implications before other experts speak. Summarizing the medical information and multiple medical facts introduced in evidence may be best at the end of the trial.

## DEMONSTRATIVE EVIDENCE OR DEMONSTRATIVE AIDS?

Be prepared for that initial call from the attorney or paralegal. Know what you can include. Interestingly, the Federal Rules of Evidence lack a clear definition of *demonstrative evidence* or *demonstrative aids*, despite often using the terms. One reference states that courts call demonstrative evidence any means used to display or explain other testimonial, documentary, real proof, or a judicially noticed fact (Brain & Broderick, 1992).

*Demonstrative evidence* is any visual aid or object used to help the witnesses to

demonstrate oral testimony (Imwin-kerried, 2008), such as models, charts, photographs, videos, or diagrams (Brain & Broderick, *ibid*). Descriptive evidence can be depicted visually in an illustrative exhibit (Lane & Lane, 2016) that can be pre-made, prepared by counsel, or created by a witness during testimony (Brain & Broderick, *ibid*).

*Demonstrative aids*, sometimes called visual aids or illustrative aids, are tangible pieces of information. They help the witness demonstrate oral testimony better, to provide jurors with a better understanding of facts (Quinn, 1999).

The medical record fact witness may be asked to prepare an illustrated report. However, using visual aids can make any LNC report stand out. Websites have free medical illustrations, or the LNC can make a chart or graph. Photos of the client's injuries, surgical scars, or prosthetic limbs are useful to help jurors to put themselves in the client's place when considering the effects of an injury on quality of life and future needs.

### Case study 1

The client was a 24-year-old male who sustained multiple gunshot wounds. The attorney requested the LNC's report to illustrate his many surgeries for the jury, i.e., the damage to his colon necessitating resection and colostomy.

The LNC showed the effects of colostomy surgery with a photo of a colostomy with the bag (Figure 1.), a medical illustration from ADAM (Figure 2.), and a screenshot from a YouTube video (Figure 3.).



Fig. 1. Colostomy with bag, YouTube video screenshot

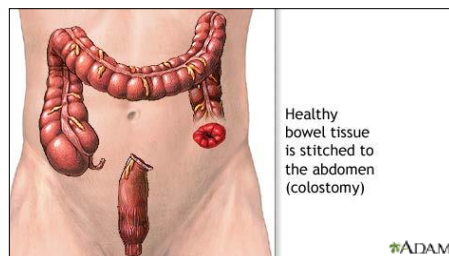


Fig. 2. ADAM illustration of colostomy formation, MedlinePlus, Medical Encyclopedia

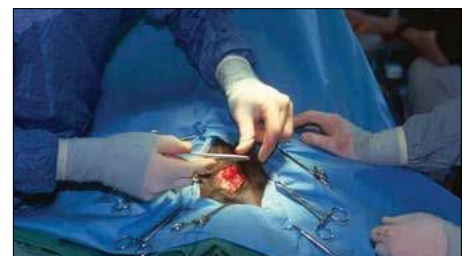


Fig. 3. Colostomy surgery showing stoma being stitched to skin, YouTube video screenshot



The report contained the full colostomy care discharge instructions. The report also included the client's deposition testimony about his perceptions of himself and how he dealt with his colostomy, e.g., He didn't socialize with friends for a year while he had the colostomy bag because "I felt like everyone could smell it and see it under my clothes, like it was visible."

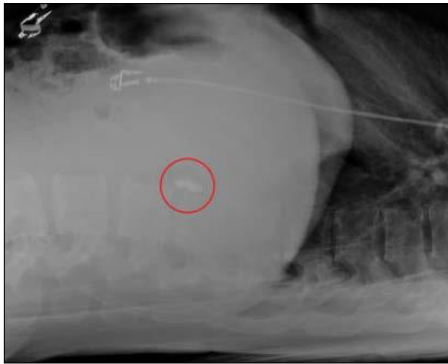


Fig. 4. X-ray of bullet near spine, Cimino-Fiallos N (2017), *Gunshot Wounds: A Targeted Approach*.

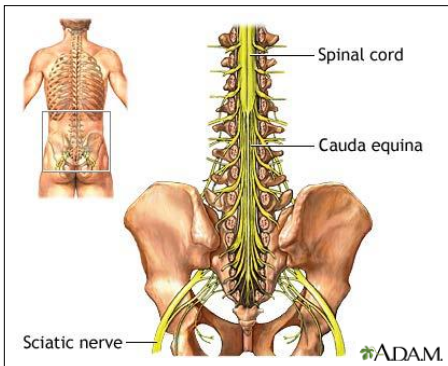


Fig. 5. ADAM illustration of spine showing cauda equina, MedlinePlus, Medical Encyclopedia



Fig. 6. Photo of spinal incision where bullet was removed, altered for client anonymity

Another bullet lodged near his spine. The report included a photo of a bullet

in this position referring to a peer-reviewed article (Figure 4.), an illustration and explanation of the client's bullet's spinal location (cauda equina, Figure 5.) with a photo of the client's surgery scar, altered for anonymity (Figure 6.), and the client's deposition answers about how he felt when he was told he might be paralyzed, i.e. "I was depressed because first, I almost died then someone told me I might be paralyzed."

### Case study 2

The client was a 55-year-old female who alleged daily headaches following 2 failed blood patches for a dural puncture during an epidural anesthetic. The attorney requested a visual representation of how very frequent headaches affected her life. The LNC designed this pie chart comparing the average duration in days of tension, menses, and migraine headaches in the general population to the plaintiff's daily headaches over a one-year period (Figure 7).

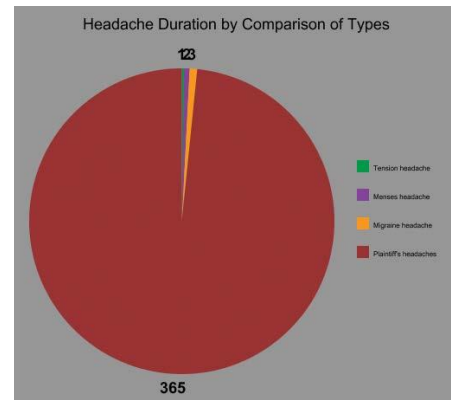


Fig 7. Graph of headaches over 1 year period, prepared by author

Key: tension headaches may last 1 day; menses headaches may last 2 days; migraine headaches may last 3 days; the plaintiff has headaches every day.

### Case study 3

The client was the family of a 50-year-old male decedent who alleged negligence in treatment of an aortic root aneurysm documented in his medical records as increasing in size. He died at home when the aneurysm ruptured.

The LNC's report included an explanation with medical illustrations and surgical recommendations.

#### Aortic Root Aneurysms

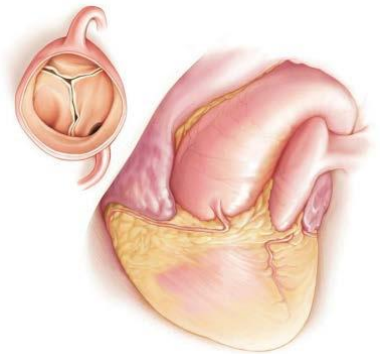


Fig. 8. Illustration of aortic root aneurysm from aortarepair.com website, Mount Sinai Health System

As the word implies, the aortic root is the first portion of the thoracic aorta that joins the outflow from the left ventricle (main heart pump) and to the remaining segments of the aorta. The aortic root is the first two to three centimeters of the aorta comprising of the aortic valve, annulus, aortic sinuses, and opening to the coronary arteries. Aortic root aneurysms are associated with acute aortic dissections. In general, elective repair is considered when the risk of rupture is greater than the risk of surgery. The consensus is to operate when the aortic root has reached 5.5 cm in good surgical candidates.

Unlike an LNC who has offered expert opinion testimony, as a medical record fact witness you have no opinions.

Using good visual aids enhances the attorney's understanding and makes the LNC's work product stand out.

### Valve-Sparing Root Replacement

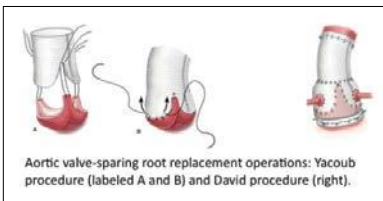


Fig. 9. Illustration of aortic valve-sparing root replacement showing grafts in Yacoub and David procedures from aortarepair.com website, Mount Sinai Health System

*As described above the aortic valve is re-implanted into the prosthetic tube graft and carefully sutured to re-establish a functioning aortic valve. Occasionally, the aortic valve needs additional repair during the operation to achieve adequate closure of the valve leaflets..."*

These example case studies are by no means comprehensive but provide some ideas of how the use of visual aids enhances the attorney's understanding of the medical facts. This makes the LNC's work product stand out and can give an edge to a marketing strategy.

### SUMMARY

An LNC may serve as perform as an expert medical record fact witness in different types of cases. An illustrated report of medical record facts as part of the LNC's work product can educate the attorney and triers of fact, or demonstrate that one picture is indeed worth a thousand words. Medical illustration,

video snapshots, and the client's own photos of injuries are valuable assets to support your attorney-client's case.

### REFERENCES

- Aortic Reference Center, Mount Sinai Health System. Retrieved July 2, 2018 from <http://www.aortarepair.com/aortic-root-aneurysms.html>
- Brain, Robert D. & Broderick, Daniel J. (1992). The Derivative Relevance of Demonstrative Evidence: Charting Its Proper Value. 25 U.C. Davis L. Rev., 957, 972. Retrieved July 2018 from <http://blog.nita.org/2016/08/demonstrative-evidence-demonstrative-aids-really-distinction/>
- Cimino-Fiallos N, MD, Contributor. June 15, 2018. Gunshot Wounds: A Targeted Approach. Medscape. Retrieved July 2018 from <https://reference.medscape.com/slideshow/gunshot-wounds-6008960#24>
- Cooper, Mary Quinn (1999). The Use of Demonstrative Exhibits at Trial. 34 Tulsa L. J., p.568. Retrieved July 2018 from <http://blog.nita.org/2016/08/demonstrative-evidence-demonstrative-aids-really-distinction/>
- Imwinkelried, Edward J. (2008). Evidentiary Foundations 130, p.132. Retrieved July 2018 from <http://blog.nita.org/2016/08/demonstrative-evidence-demonstrative-aids-really-distinction/>
- Marks, Steven C. (2004). Trial Practice, The Admissibility and Use of Demonstrative Aids. GPSOLO Best of ABA Sections Magazine, March 2004, Volume 21, Number 2 Retrieved July 2018 from [https://www.americanbar.org/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/demonstativeaides.html](https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/demonstativeaides.html)
- U.S. National Library of Medicine, MedlinePlus, Medical Encyclopedia. Retrieved July 2, 2018 from <https://medlineplus.gov/encyclopedia.html>



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