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Developing a Life Care Planning Business

Linda Husted

Pat: Welcome to Legal Nurse Podcasts. This is Pat Iyer and today we're going to be talking about life care planning. This is a topic that we have not covered on the show yet and as I thought about who would be a great person to interview on this topic, Linda Husted immediately came to mind.

Linda worked for my legal nurse consulting business for several years before I sold the company and we had the opportunity to meet at a Northeast Regional AALNC Conference several years ago that was held in Massachusetts.

Linda has a Masters of Public Health Degree. She's been practicing as a registered nurse for 51 years. She has 18 years of hospital experience in neuro intensive care, medical surgical nursing, operating room, recovery room and labor and delivery. She has more than 30 years of experience in case management, including handling catastrophic claims with head injuries, spinal cord injury, burns, amputation, multiple trauma and chronic pain.

Linda obtained legal nurse consulting certification as an LNCC in 1999. She's also a certified nurse life care planner, a certified case manager, a CDMS and a CRC. In 2003, she obtained her life care planning certification and went into business at the age of 60.

That's wonderful. You're inspiring to me, Linda. Welcome to the show.

Linda: Thank you so much Pat. I really appreciate the opportunity to speak with you today and also to speak with your listeners.

Pat: Tell us about CDMS and CRC since I was not fluent in being able to decipher those certifications.

Linda: The CDMS is Certification in Disability Management, so it would be a Disability Management Specialist Certification. A CRC is a

Certified Rehabilitation Counselor Specialist.

Pat: You certainly have a lot of certifications to keep up with.

Linda: Yes, I do and that also involves continuing education that you have to continue to train, as well as listen to seminars, webinars and go to conferences so that you can develop those continuing education credits in order to become recertified in all those different areas.

Pat: I know that some of our listeners are not familiar with life care planning. They certainly may not be life care planners or they might not really understand the role of the life care planner.

Could you explain for our listeners what your role is first when you're working for a plaintiff attorney and secondly when you're working for a defense attorney?

Linda: The role of the life care planner is to project life time medical and non-medical needs and costs for an individual who has a major or catastrophic injury or chronic medical condition. It really doesn't matter whether you're working for the plaintiff or the defense. As an expert your plan should be basically the same.

The individual may have had a toxic exposure, such as to lead. It may be a case involving failure to diagnose, such as cancer or cystic fibrosis. The life care plan may be for a spinal cord injury, burns, amputation or traumatic brain injury.

Take Baby Q for instance. Baby Q's mother went into labor at seven months. At delivery he was double footling breech presentation. Instead of delivering Baby Q by c-section the obstetrician delivered Baby Q vaginally. Baby Q's delivery involved a difficult extraction and after delivery of his body he had head entrapment for approximately 15 minutes. As a result Baby Q had a long period of lack of oxygen and subsequently developed ventricular brain hemorrhage and seizures.

He sustained a significant brain injury and respiratory problems resulting in permanent disabilities, including blindness. He had developmental delays and required lifetime care, supports from multiple specialists, diagnostic testing, medications and equipment.

Baby Q needed a life care plan.

In legal terms a life care plan addresses future medical damages. Life care planners do not render an opinion on standard of care or liability issues. We focus instead on providing a detailed plan with costs in today's dollars. Typically the plan provides costs of all the goods and services needed as an annual figure. The lifetime costs can then be determined by multiplying the annual cost of care by the individual's life expectancy. Whether the plan is for the plaintiff side or defense side, the life care planner's projections should include goods and services related to the injury that are both reasonable, and medically necessary.

Pat: Linda, sometimes I know that defense attorneys will contact a life care planner and ask for an analysis of the plaintiff life care plan. In other words, can that defense life care planner shoot down some of the numbers that the plaintiff life care planner has provided? Have you been involved in receiving that kind of a request?

Linda: Yes, definitely critiques of a plaintiff's life care plan.

Pat: I know that sometimes there's a motivation behind the defense attorney's request. What is behind that type of request?

Linda: I think it's involving the future medical damages. I think they want to control the amount of damages for the final costs. They're going to be looking for the life care planner to review the plaintiff's plan to see if the final numbers can be lower. Basically it usually involves a review of the plan and the records, and then a telephone call before writing any plan or critique to discuss my opinion.

Pat: I know that we talked in the bio about how you have experience working in a hospital. Going from a hospital setting to life care planning and case management is a big transition. How did you get involved as a life care planner?

Linda: How I got involved as a life care planner was back in the mid 1980's I had already made the move from acute care hospital work into case management. I worked for a national rehabilitation company called Intracore. Some of Intracore's customers were national companies or corporations. These customers not only provided workers comp

insurance to their employees, but also offered group health insurance for their employees' non-work related health conditions.

These companies asked Intracore for help in determining how much their large complex health claims were going to cost. They had to figure out how much each of these large claims cost so they can reserve enough money and understand their financial exposure. We call them lifetime medical cost reports.

I remember the case of a 35-year-old woman who had an inflammatory bowel condition called Crohn's disease. She had surgery and only had 1 ft. of small intestine remaining of the normal 20 ft. She could not eat or digest well and required very expensive specialized nutritional support. The employer needed us to figure out all of her future costs for care.

In the 1990's, I worked for two large insurance companies. Claims adjustors had to set up reserves for complex and catastrophic injury claims. Occasionally I provided lifetime medical reserves for them. These reports were internal documents and not as detailed as life care plans for litigation.

In 2003, while providing a medical chronology the records included a life care plan. The plan was for a young man who sustained a brain injury as a post-operative complication for jaw surgery. I remember it well and in order to reduce the intraoperative bleeding in the surgical field, hypotensive anesthesia kept his blood pressure below normal. The anesthesiologist lowered this man's blood pressure during his procedure, however the duration of the lower than normal blood pressure continued after surgery into the post-anesthesia room. This man ended up with an anoxic brain injury resulting in a lifetime of medical care.

After reviewing this plan (I had never seen a plan pre-litigation before) I said, "I want to do this." I decided to take a course in nurse life care planning. I used vacation time to take the training. I then obtained my certification as a nurse life care planner and filed for an S-Corp in December of 2003. A few months later I resigned my full time job as a case manager and began my business.

Pat: Thinking about your background, Linda, you went from being an employee to becoming self-employed. Obviously that's a big transition and for many people that's a risk that they are intrigued about taking, and possibly intimidated about taking.

What personal qualities enabled you to take that risk and also to become successful as a life care planner?

Linda: I would say first of all at the outset I never planned on going into business for myself, so it was a progression in time. I would say one of the qualities that contributed to my success is working hard and giving 110% in almost everything I do. I do not try to work hard. It's not a quality I try to develop, but I think it's just in my nature that I want to do the best job I can. Certainly computer skills help to make our lives easier, but I still work hard.

Another quality is a thirst for self-improvement. In business my goal is to continuously improve, but there's always room for that. When I was working before I went into business for myself, I was working as a dedicated rehabilitation specialist for the entire state of Ohio. My job required extensive driving crisscrossing the state.

My time in the car between appointments was my time. While driving I spent hours and hours listening to self-improvement tapes such as Anthony Robbins and tapes from Nightingale-Conant, the world's largest publisher of personal development products. I joined Toastmasters International to improve my listening, thinking and speaking skills. Toastmasters is a good laboratory to try out your presentation skills in a supportive environment.

The thirst for self-improvement also means being open to instruction from others. For example, Pat, when I did work for you in your previous business, you made many suggestions on how to sharpen my writing skills. Nurses coming from an acute care background are not naturally authors. Life care plan narratives are a long way off from the nurse's notes we wrote in the hospital, 50% of which were probably in the passive voice. There's always room for improvement with writing skills.

Another quality is having a positive attitude and this is always helpful.

I think seeing the glass half full instead of half empty is in my nature. I didn't try to develop this quality. I know that it has helped in my relationships working with customers and clients resolving sticky issues. I'm sure I developed customer service skills over the years that are helpful. In the end though, being authentic I see the best in people and I'm also proven wrong. A positive attitude colors everything you do.

Pat: Now I can attest from working with you, Linda, that you are conscientious and always interested in improving your work product. Those are critical qualities for becoming successful in this field. I also connect with you in terms of using that time in the car to learn. I've spent a large portion of my life driving, thinking, listening and learning by listening to audio programs such as the ones that you're describing.

I think that's a great point to bring out in this program is that we have so many opportunities to fit in time to enrich ourselves instead of watching television or watching a movie. You could be reading a book, developing skills and learning. All of that is helpful when you're an entrepreneur.

Linda: Definitely.

Pat: I would like to switch the focus a little bit. You talked about beginning to work as a life care planner after leaving your business. What would you recommend that life care planners do now to begin to get clients to build a practice?

Linda: With somebody new who's just beginning as a life care planner I would recommend that they join as many organizations as possible, such as joining the American Association of Nurse Life Care Planners, the American Association of Legal Nurse Consultants and even the local chapter of the American Association of Legal Nurse Consultants. Volunteer within the organization.

When I first started in business, I really didn't have any customers. I met with the then president of the New Jersey Chapter of the American Association of Legal Nurse Consultants at a life care planning conference. Speaking with her at one of the breaks

convinced me that I had to meet some of the phenomenal LNCs in her chapter. At the time New York did not have a chapter, so I traveled six hours roundtrip to the monthly dinner meetings in New Brunswick, New Jersey. I met some amazing nurse entrepreneurs and I still do business with a couple of them today.

One of the nurses I met at the New Jersey Chapter and I co-exhibited at a New York trial attorney's meeting - we both came away with referrals. I would recommend going to as many conferences as you can, not only to keep current in your field of interest but also to meet people. You never know who you may meet who knows an attorney who has a need for your services in your geographical location. I've received referrals in the past just by networking at conferences.

Write an article. Publish an article of interest to life care planners. When I first started in business, my curriculum vitae looked skimpy under the publication section. Previously I had attended training in Medicare Set Asides called MSAs. I decided to write an article on MSAs. My article was an informational interview with the lead MSA allocator in the New York office of the Centers of Medicare and Medicaid.

Shortly thereafter I made a call to join the New York Claims Association, a group of adjustors and vendors doing business in New York State where I live. The head of membership took down my information and asked me what I did. I told them that I did life care planning and at the time I had my certification in Medicare Set Asides. That piqued his interest. He asked if I would present on MSAs at a claims association meeting and I said, "Yes".

The lead attorney for the New York State Insurance decided to join the presentation. I also asked the lead MSA allocator I previously interviewed at CMS and voilà, I not only had a member of the New York Claims Association but now a presenter. I received referrals because of that presentation and my membership: networking, publishing, exhibiting and speaking.

Joining associations doesn't always lead to referrals instantaneously. It may take weeks and sometimes months. If you need to sharpen your skills in any of these, stay publishing and get more training. The point

is to get yourself out there.

Pat: All of those things accumulate to develop relationships with people, to make you more comfortable, to make people feel like they know and they like you, trust you and they're ready to recommend you to an attorney who's needing a life care planner.

Life care planning is a different skill than legal nurse consulting in some senses. It does rely heavily on being able to analyze information and prepare a narrative, but it also involves financial aspects. Could you tell us about the skills that you found to be critical for a life care planner to have in order to succeed in this field?

Linda: I think first the ability to work independently is critical to the life care planner. That is, the planner is able to take initiative to accomplish the goal.

When you get a referral what are the steps needed to realize the final product, the life care plan? No one is looking over your shoulder directing your every move. Some nurses coming from the hospital environment where activities are very task oriented and have a difficult time working on their own. Working independently doesn't mean you can't work as a team member however. Collaboration is extremely important in life care planning.

Another critical skill for the life care planner is the ability to analyze as you said and synthesize sometimes banker box full of records to arrive at an individual's functional capacities and care needs, not only now but in the future. This means reviewing, analyzing all of the hospital medical records and provider records, such as physical, occupational, speech and psychology records, expert reports and depositions if there are any plus your own nursing assessment. Also included is the ability to recognize the reports and medical information you may be missing in order to take the most accurate projection of needs.

Another critical skill is the ability to provide a cost for every component of the life care plan, the financial aspect as you had said. That means identifying a reasonable cost for every item in the plan, for example medications, diagnostic testing, durable medical

equipment and all the services recommended in the plan. Cost research is important and can be a major area of difference between life care plans submitted for the plaintiff and defense.

Pat: I know that you've been working in this area for a while, Linda, and are familiar with the changes in litigation and the healthcare environment. What changes do you see on the horizon that you believe are going to affect life care planners?

Linda: Pat, I would like to comment on a few changes in the healthcare environment and lead changes in litigation to the legal experts. Healthcare outcomes are not improving in the United States. This year Dr. Martin Makary, a professor of Surgery and Healthcare Policy and Management at Johns Hopkins, and his team published an article in BMJ entitled "Medical Error: The Third Leading Cause of Death in the United States".

They calculated that in 2013 more than 250,000 deaths occurred due to medical error. These figures do not even include outpatient deaths or deaths at home due to medical error.

If at least a quarter of a million people die in the United States due to medical error every year, how many individuals are out there who do not die from medical harm but are left with life-long disabilities?

We add all of the people harmed due to medical error, an unknown number, with our changing demographics and we have in my opinion a perfect storm. The changing demographics are the aging population and the projected nursing shortage. By 2030, 20% or 1/5 of our population will be over age 65. Older adults as you know use and need more healthcare services, but who is going to care for those older adults?

The Bureau of Labor Statistics in the United States projects the nursing shortage over the next 10 years is going to be significant. By 2022 there will be over a million job openings for registered nurses. I see an increased need for life care planners, as well as LNCs.

Pat: Certainly a lot of pressure on the healthcare environment to be able to provide quality of care with changing resources.

Linda: Yes.

Pat: Do you have any secrets about being a life care planner that you would like to share as we wrap up this program?

Linda: The secret is this, "Do what you love by aligning yourself with your interest and values." If I can generalize many legal nurse consultants, as well as life care planners love to wear their investigator hat while they are working as I do. Many legal nurse consultants and life care planners are not satisfied with surface information. They love to dig deeper to discover the answers, the motives, the facts that can completely turn a case around.

You probably heard the saying, "You don't know what you don't know." Get an LNC on a case and you are bound to discover a new slant and perhaps a key bit of information that will help you settle a case.

That's a secret or a tip, but just as an example I had to do a life care plan involving a man in his 30's who could no longer work due to multiple trauma. In addition to this man's work injury he was on methadone. With all of the protections in HIPAA, it is hard to obtain mental health in substance abuse records. However, I kept insisting that we would need the methadone clinic records.

When the voluminous handwritten records finally arrived, I learned this man's injuries stemmed from a severe beating in the subway rather than as a result of his injury at work. By learning that the injuries related to the subway beating, a life care plan as a result of the work injury was no longer needed. I combined my legal nursing skills as an investigator with my life care planning skills.

Another tip of being a successful LNC or life care planner is having a pristine end product. I listened to one of your podcasts by Mindy Cohen and she spoke about the importance of having a pristine CV. I would like to expand that to include your report or life care plan. Some people are good editors, but the majority of us may not pick up all of the misspellings, poor constructed sentences or descriptions that can easily be misinterpreted. Having another set of eyes always helps. The final report needs to be the best it can be. Unless you are working

behind the scenes your report or plan will be reviewed by many.

Another secret of being a successful LNC or life care planner is being able to support your position. An attorney hires you for your expert opinion. It's important to think about how well you can substantiate your findings and how opposing counsel, a judge or a jury might receive your opinion.

The better you support your opinion and clearly articulate your rationale, the more powerful your opinion. It is important to also be mindful of your past testimony however. Is it in line with your opinion today? If not, what are the variables that made you change your opinion?

Opposing counsel will try to impeach your testimony, especially if he or she has a multi-million dollar demand at stake.

Pat: I have experienced that first hand sitting on the witness stand. How can people get in touch with you, Linda, to learn more about your services?

Linda: If they would like to get in touch with me, they can go to www.RNzone.com Husted Life Care Planning and I have a website that lists services that I provide.

I just want to end my conversation with you and just encourage as many legal nurse consultants to consider expanding their services to include life care planning. I think there's going to be a tremendous need.

Pat: It certainly sounds like it as you think about the demographics and the health needs that older adults will have. I so much appreciate Linda having you on the show talking about life care planning and about your interesting journey, and perspective in handling these kinds of cases.

Linda: Thank you, Pat. I really appreciate having a chance to talk with you about this.

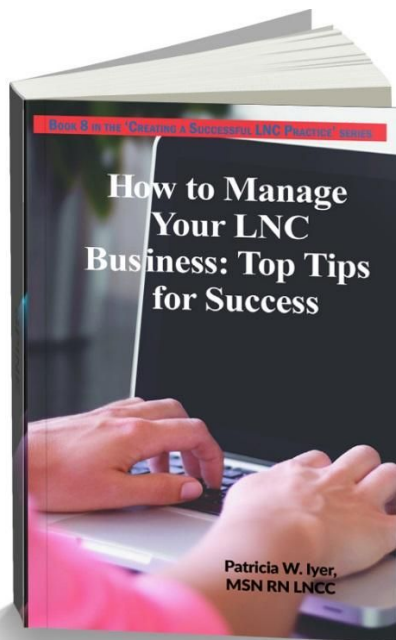
Pat: This has been Legal Nurse Podcasts, Pat Iyer talking with Linda Husted about life care planning. We will be back next week with a

new interview and a new topic. I so much appreciate you as listeners sending in your comments and liking the podcasts. Every time somebody likes a podcast it shows up on my cellphone. I love looking down at my cellphone and seeing the names of the people who are liking the podcasts.

Please send in any thoughts you might have about topics that you would like to cover. You may communicate with me through www.LegalNursePodcasts.com.

Thanks so much and we will be back next week with a new show.

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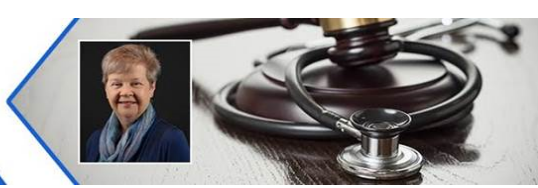
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LNP 69

How to Create a Strong Legal Nurse Consulting Business

Hi, I'm Pat Iyer. Welcome to this edition of *Iyer's Insights*. Here are some strategies you can implement to create a strong legal nurse consulting business.

1. **Leverage your time and talent.** You will build a stronger business if you use subcontractors. Hire people who have particular expertise in an area you lack, such as a different type of clinical nursing, to review cases for you. This is a better use of your time than to try to master the nuances of a different area of nursing. Without subcontractors, your income will be dependent on the number of hours you can work.

In 1989, I got a call from an attorney who wanted me to review an emergency department case as an expert. I told him I was not an ED nurse, but knew one who would be excellent for his case. After I connected them, I realized they would both benefit from the introduction, but I had just done a lovely unpaid favor. This was the impetus for forming Med League and recruiting a pool of nursing expert witnesses.

2. **Train your subcontractors well.** Explain your expectations, give them sample work product, review their samples, and be quick to correct and reject those who are not capable of doing the work. I recall getting a phone call from an attorney who told me my expert had poor grammar and spelling skills. At that time, I did not have a policy in place to proofread our experts' reports. I was horrified by what I saw. We quickly started a proofreading policy which has saved much embarrassment over the years. It helps us evaluate and strengthen the skills of our experts.
3. **"Hire slowly, fire quickly."** There is a great deal of wisdom in that expression. Carefully screen employees. A typo on a resume is enough for me to set it aside. I have fired employees for absenteeism, incompetence, and poor attitude. Be grateful when a marginal employee quits. Although it costs short term disruption, it is far better for a person to self-select out of your system. Don't tolerate marginal work performance. There are far better people looking for work.
4. **Use financial controls in your business.** Avoid providing embezzlement and theft opportunities. When you have employees, have one person open

the mail and another person deposit the money. Do not allow employees to sign checks; no one should be able to sign except for the owner. (One of my colleagues caught an employee buying a personal computer charged to the company credit card. The employee counted on the owner not looking at the credit card bill. It was a fluke that the owner saw the bill and caught the purchase.) Allow only extremely trustworthy employees to access bank accounts.

5. **Be very careful about allowing employees to remotely access your server.** I did not allow this in our company. Someone could get ahold of a laptop or desktop computer in an employee's home and gain access to the company's data. And if that employee quits or gets fired, how will you keep your data safe?
6. **Your employees are not your friends.** Do not be overly generous. Be fair; be aware of the labor laws, and be careful with benefits and bonuses. Our practice of giving an extra \$100 at Christmas over the years became an extra week of pay, and then an extra two weeks of pay. I thought the employees understood this was optional on our part. When 2008 came and we were unable to provide that extra paycheck, it affected the morale of my two long term employees. My practice of giving extra and helping my employees on a personal level came back to bite me.
7. **Pay attention to relationships.** Your clients want to work with LNCs they know, like and trust. There is a lot at stake in a lawsuit - a lot of time, money, and effort. Look for ways to build strong relationships with your clients so that they would not dream of working with another independent LNC firm. Advise them when you come across a case like theirs that has been settled or tried, and share the result. Be flexible when possible with payment plans.

One client of ours was frank with me years ago that his client was responsible for the fees and could not pay the bill, nor could the attorney. Our client told us, "Be flexible with me and I'll make it up to you." He was a loyal client for more than a decade and he paid his bills.

8. **Use honest and ethical business practices.** Return unused portions of retainers, keep detailed billing records, and always check for a conflict of interest before accepting a case. A legal vendor I know told me that she only

returns unused portions of a retainer if the client asks for them. That strikes me as dishonest. You have to be able to look yourself in the mirror and be proud of your ethics.

- 9. Charge reasonable fees that the market will bear.** Do not join the rush to the bottom to undercut your competitors. You will destroy your business by performing work at the lowest rate on the market, find it impossible to raise fees, and run out of money. One man called me a few years ago to ask if I wanted to bid on doing medical summaries. He quoted a price he had heard from other companies, which was half of our hourly rate, and asked if I could do better. I wanted to ask him, “Do better for ourselves or for you?” I explained we could not do the work for that rate.

Another firm asked us to work on pharmaceutical product liability cases, and wait until the cases settled to get paid. I explained we could not ask our subcontractors to wait to get paid; I was unwilling to go into debt to pay them before we got paid. Think through the financial consequences of taking these kinds of arrangements.

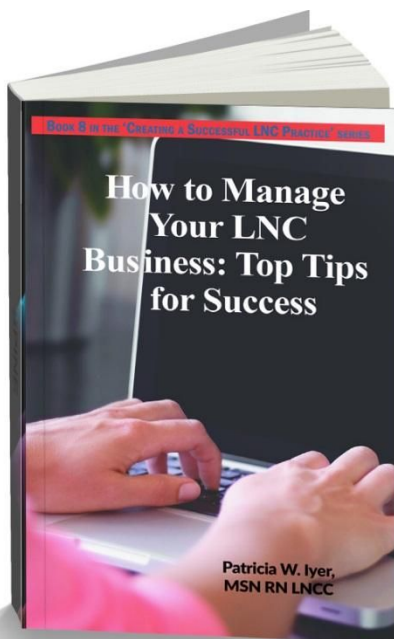
- 10. Charge rush fees.** Determine what will constitute a rush rate, with a specific time frame, and adhere to that rate. We charge our clients and pay our nursing expert witnesses a rush rate when they are expected to produce work on a short term around. I resisted rush rates for years, fearing it would cause us to lose business. I found attorneys expected it, and even volunteered at times, “If you have to, charge me more to get this done.”

- 11. Consider the multiple ways you can reach your market: a website, a blog, tweets, Facebook, ezines, emails, videos, and video testimonials.** Use these methods to remind your client base of your existence. Learn the nuances of marketing and writing appealing copy for brochures and websites. Your prospect is bombarded with information. You have to capture that person’s attention quickly and in a compelling way. I have studied this aspect of running a business and invested thousands of dollars in courses and books to learn more about marketing. The more you understand about marketing, the more comfortable and confident you feel.

- 12. Never stop marketing.** At one point one law firm accounted for 30% of our revenue. It would have been tempting to sit back and relax, but I never stopped marketing, exhibiting, and writing to attract more clients. When the

personal injury cases in our state took a nose dive because of changes in the law, my business would have also taken a similar nose dive if I had relied only on this firm for paying the bills.

Your primary client could have a sudden change in practice due to a change in the law, or could leave the firm, or drop dead. In my husband's case, one year he got 90% of his income from one client. (He sold machine parts.) Disaster struck when that client figured out a way to cut him out of the deal. My husband lost his entire business overnight and for the next year, struggled to make any money at all. I learned from that experience.



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