

Case Study

By Margaret T. McCarthy, R.N., J.D., Shareholder, Renaud Cook Drury Mesaros, P.A.



For more than 50 years, the law firm of Renaud Cook Drury Mesaros, PA, has provided clients with excellent legal services, dedicated to solving problems and achieving optimal results.

The firm initially developed its reputation through litigation expertise, with attorneys long recognized as premier trial lawyers, on both a local and national basis.

In response to the expanding needs of its clients, the firm has gradually extended its problem-solving approach to many specialty areas. Today, Renaud Cook Drury Mesaros, PA has more than 40 attorneys and offers a full range of legal services in the business and transactional areas, as well as in litigation. As a result, the firm's client base is strong and diversified; it includes FORTUNE 500 corporations, national and international insurers, self-insured businesses, public and closely held companies and private individuals.

Their attorneys practice in state and federal trial and appellate courts; however, their most important accomplishment, is the multitude of successful outcomes that they have achieved on behalf of their clients.

The firm represents numerous health care providers against medical malpractice and negligence claims, in administrative hearings, and in proceedings before the various boards of examiners. Health care clients include physicians,

nurses, psychologists, social workers, pharmacists, chiropractors, hospitals, long term care facilities, pharmacies and pharmaceutical companies as well as manufacturers of medical devices. Issues frequently addressed include standards of care, medical causation, and professional ethics.

Margaret T. McCarthy is a member of the firm. I had the opportunity to interview her.

Tell me about your professional background and how you came to join Renaud Cook Drury Mesaros.

I have a Bachelor's Degree in nursing. After receiving my degree in nursing, I practiced as a critical care nurse in a 490 bed hospital. In an effort to find a niche in a more specialized market, I decided to attend law school. Following law school, I went to work as a risk manager for a medical malpractice company. My job as a risk manager was to educate doctors and nurses about risk and ways to avoid risk. I spoke nationally at hospitals and doctor's offices on risk management and conducted risk assessments of office practices.

Why did you choose to work in risk management immediately after law school?

The opportunity presented itself to me right after graduation from law school and I decided to take advantage of it. It was a great way to incorporate my nursing practice and education with my legal degree. Risk management was a springboard into the type of litigation work I do now. As part of my risk management work, I would frequently go into doctors' offices and conduct risk assessments. I would go through all of their medical records, policies and procedures and general office practices and evaluate how they were managing all aspects of patient care. Following my evaluation, I would conduct an exit interview with the doctors and business office managers of the practice and advise them on reducing risk exposure.

While I enjoyed my time as a risk manager, I wanted to expand my experience through the practice of law. I left my job as a risk manager after three years and moved to Phoenix to join the medical malpractice group of Renaud Cook Drury Mesaros.

Which of your two areas of expertise, risk management and nursing, were of most interest to the firm at the time of hiring?

Certainly risk management was important but I think it was my nursing background that was of the most interest at the time. Being able to pick up a medical record and understand the medical as well as legal issues was and continues to be very valuable in medical malpractice.

Did this create an advisory as well as legal practice role for you?

From time to time, I do get asked advisory type questions whether it be in risk management or nursing. However, my primary role is to take responsibility for defending claims of medical malpractice. I have been fortunate enough to have developed a legal practice exclusive to medical malpractice and medical issues. The firm has been very supportive in my efforts to develop a specialized focus in long term care litigation.

Describe the nature and scope of that practice.

Long term care litigation includes litigation arising from both skilled nursing facilities and assisted living facilities. Arizona has always had a large population of retirees and long term care facilities are relatively abundant in this area of the country. We saw the movement of the long term care litigation gravitating from Florida to Arizona. We have, like most every other state, an Adult Protective Services Act, which is a very plaintiff friendly piece of legislation.

The Adult Protective Services Act provides a remedy for persons who are vulnerable or incapacitated and who suffer from

neglect, abuse or exploitation. While we generally think of the elderly population as persons fitting within the vulnerable or incapacitated person definition, plaintiff attorneys have been very successful in expanding the Act to include anyone over the age of 18 who is deemed vulnerable or incapacitated. The language of the statute and its legislative history make clear that the statute was meant to apply to elder abuse and, specifically, to target abuse, neglect and exploitation in nursing homes and other residential care facilities. The statute was not meant to apply to every claim of medical malpractice that involves the elderly or an incapacitated adult, especially when the alleged malpractice pertains to the care and treatment provided at an acute care hospital or other facility that is not a long term care facility. However, plaintiff attorneys have been successful in expanding the Adult Protective Services Act to include claims against hospitals and claims involving young adults.

The Adult Protective Services Act in Arizona can also be a very lucrative practice for plaintiff attorneys. The Act allows for the recovery of attorney's fees up to two times the amount of the compensatory award with the ability to motion the court for additional fees if reasonable. The Act also allows for the potential recovery of punitive damages. These factors often influence early negotiation strategies.

In addition to my practice in defending long term care facilities, I also defend pharmacies, manufacturers of medical devices, hospitals, doctors and nurses in various medical malpractice actions. I have also worked in defending nurses and other professionals before their respective state boards.

You obviously have insurers who use your firm as panel counsel. Do you also get insurers who seek you out because of your special expertise?

Yes. The firm is often sought out because of its reputation and expertise in

many areas of the law.

Who retains your firm?

We are retained primarily by insurance carriers and serve as panel counsel to a number of insurance carriers. We are also retained by individual clients to assist them with a demand or a claim. There are times when a client, who is served with a demand letter, seeks our services to conduct an early investigation before formal litigation commences. This allows for an early evaluation and possible resolution to the matter.

How successful is the early evaluation approach?

It can be very successful. I was recently able to resolve a matter that started out with a \$600,000 demand for \$30,000 by using this approach. If you achieve an early resolution for the client, it can be very cost effective. Arizona has very liberal discovery rules which can be quite costly. Early resolution means the client avoids having to pay for the level of discovery that you would expect in formal litigation.

To what extent do you find it advantageous to have the nursing health sciences background at the demand letter stage and to be able to talk knowledgeably with the other party?

Having the nursing background serves me well. There are certain cases where I will consult with medical experts even in the investigation period. Our firm is also fortunate in that our medical malpractice group has nurses on staff as consultants to review medical records. We also have on staff a physician attorney, pharmacist attorney and psychologist attorney. We have a pretty strong arsenal on hand to deal with any type of medical malpractice issue.

Is there more of a need for a team approach in medical malpractice than standard P & C litigation?

Absolutely! In litigation, my focus is on the legal aspects of the case. Medical research and management of medical

records is done generally by one of our nurse consultants. Depending on the issues, I may also get one of our specialized attorneys, whether it be our pharmacist, physician or psychologist, involved. It does become a team approach.

What impact do litigation guidelines have on this? Do you find there's more leeway allowed in terms of bringing additional parties on board in light of the process?

When you are managing a file, you have to be very careful about how you manage the process. It is incumbent upon the attorney to make certain that he or she has client consent before bringing additional people in on the file. It is very much a client driven decision.

Is the approach that your firm has taken with the assemblage of an integrated medical malpractice team the way of the future?

I think that at present our firm is in a unique position. However, there is an increasing number of people who are obtaining joint professional degrees. I would expect that to see an increase in the number of professionals in the medical malpractice field with dual degrees in law and health care.

Are there medical malpractice specific professional associations?

Yes. I am a member of the American Association of Nurse Attorneys as well as the American Association of Health Lawyers.

Are there any plaintiff firms as strategically organized and focused as your firm with your kind of bench strength?

I am not really aware of any. Many plaintiff firms will have nurse consultants on staff and may retain medical consultants from time to time.

Has your firm given any thought to going national?

Renaud Cook Drury Mesaros is an active member of ALFA International. Founded

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revealed through a thoughtful review of the medical records, giving you and your team the information necessary to get the claim dismissed.

If a claim is substantiated, mitigating damages can be difficult, but is possible through a thorough analysis by a nurse consultant company that specializes in reviewing medical records. Record review reports need to include, in addition to a chronology of events and deviations in care, the identification of case strengths, weakness, and potential deponents; these are invaluable in discovery and the defense of the claim. Then the initial evaluation reports can be used as communication tools and references throughout the life of litigation. All this can be done prior to obtaining expensive testifying experts.

Should the claim require the retention of experts, a legal nurse review will not only identify which experts to obtain, but what records they need to review. This allows you to save on record review costs by reducing the time it takes for experts to read irrelevant and/or redundant records. In addition, providing experts with a chronology reduces their time in figuring out what occurred and what elements of care to investigate and opine on. The role of a legal nurse consultant and their work product has a cost saving impact throughout litigation.

However, not all legal nurse consultants are the same. Selecting the right team to review your records is as critical as selecting any of your other experts. Assessing clinical experience and specialties, considering education, training and certification, and evaluating consulting exposure and abilities, are all important components in selecting legal nurse consultants. As with most experts, there are varying degrees of competence, ability to execute, and speed at which they produce. In my experience, no matter how well a single reviewer analyzes the records, (even a seasoned nurse consultant), a single review does not compete with a multi-level review. Every record should be reviewed by not one, but two specialized legal nurse consultants. Through this collaborative effort, each nurse expert adds his or her own distinct analysis, building reports that account for every interpretation and strategic consideration extractable from medical record data. A layered quality assurance process should be in place to ensure that no stone goes unturned and that you get all of the advantages up front.

Your claims need nurse consultant reviews and a process that enable you to outsource the review of medical records with comfort and confidence. The result is that you will get stronger data, sooner, and strategic insight that can single-handedly change your position in a case.

Partnering with a legal nurse consulting firm gives you a competitive edge. With upfront, tailored budgets, this approach to record review and claim management provides the flexibility to work with your schedule and budget while discovering the vital information you need. The work is delivered in timely, thorough, customizable reports that make even the most complicated case comprehensible for all levels of client staff.

Nancy E. Fraser, R.N. is CEO of Med Legal Consulting Source, which she founded in 2000 to provide customized medical record review services to insurance companies and attorneys for plaintiff and defense counsel.

Nancy received her bachelor's degree in nursing from the University of Wisconsin-Madison and holds a certificate from the University of Southern California in healthcare management development. ■



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in 1980, ALFA International is the oldest and one of the largest legal networks of independently owned law firms. Its worldwide membership includes 120 law firms, with 85 members within the United States. Over 9,000 lawyers and another 10,000 support staff work for law firms affiliated with ALFA International. In the United States, ALFA International's member firms maintain offices in virtually every major metropolitan area.

The firm's association with ALFA has enabled it to draw clients from a very broad base.

Margaret T. McCarthy is a shareholder with Renaud Cook Drury Mesaros, PA in Phoenix, Arizona. She received her B.S. in Nursing from Presentation College in Aberdeen, South Dakota. She received her J.D. from The University of South Dakota in Vermillion, South Dakota.

Since joining Renaud Cook Drury Mesaros, PA, Ms. McCarthy has represented clients through a number of insurance carriers

as well as a number of other major corporations and entities. Ms. McCarthy specializes in long term care, health care and medical malpractice, pharmaceutical litigation and medical device litigation.

Ms. McCarthy is a member of American Health Lawyers Association, American Association of Nurse Attorneys, Council on Litigation Management, Arizona Health Care Association, the South Dakota State Board of Nursing and the State Bar Association. Ms. McCarthy can be reached at 602-256-3013 or via email at mmccarthy@rcdmlaw.com. ■