

# The “Truth” That Isn’t True

“If it wasn’t documented, it wasn’t done”

LNctips®

## INTRODUCTION

One of the most enduring sayings in nursing — *“If it wasn’t documented, it wasn’t done”* — is not a legal principle. It’s a risk-management slogan that collapses two very different concepts into one misleading phrase.

The first half (“If it wasn’t documented...”) refers to **documentation standards**, which are administrative and regulatory. The second half (“...it wasn’t done”) refers to **standards of care**, which determine negligence or malpractice. One governs writing; the other governs performance.

Consider a nurse who turns a patient six times during a twelve-hour shift but only documents it twice. That’s a deviation in documentation, not in care. Legally, the distinction matters: incomplete charting may raise credibility questions, but it does **not** automatically prove a deviation in the standard of care.

The slogan persists because it’s simple, memorable, and emotionally reinforced in nursing education. It motivates charting compliance — but it does not reflect how courts evaluate evidence.

When I have taught this to aspiring LNCs, someone inevitably argued that missing documentation *was* proof that care was missing. After all, Certificates of Merit often rely solely on the medical record. And at that early stage, documentation gaps can look like care gaps.

But in litigation, documentation is **one** form of evidence, but not the only one. Courts also consider testimony, habit, routine practice, corroborating facts, and contextual evidence. The legal question is never “documented or not documented.” It’s **what does all the evidence show?**

## WHY LNCS MUST MOVE BEYOND THE SLOGAN

- Litigation is not a documentation audit. It’s an evaluation of **all** evidence. A missing note is different from a missed action.
- Attorneys use the phrase rhetorically, often to reference regulatory expectations — not as a rule of law.
- Written evidence is not automatically superior to verbal evidence. Credible testimony can fill in context that documentation cannot. Juries often understand that nurses prioritize patient care over charting during critical events.
- When documentation is incomplete, the law allows habit and routine practice to fill gaps. Under the state equivalents of Federal Rule of Evidence 406, nurses may testify

about their usual practices, and that testimony is relevant to determining what likely occurred.

- During litigation, a strong expert opinion must reconcile the **objective** (the chart) with the **subjective** (the testimony). Experts who “cherry pick” only the documentation while ignoring deposition testimony risk exclusion for using an unreliable methodology.

For example, if a nurse testifies that they “always give medications within 30 minutes of the scheduled time,” that testimony must be weighed — unless the record shows something to the contrary, such as the patient being in Radiology during the relevant window, which would undermine the claimed routine. This is where LNC analysis becomes powerful: integrating documentation, testimony, and context to determine what is credible.

## WHY THIS MATTERS FOR LNC PRACTICE

A risk management catchphrase is not the “truth.” Treating “not documented” as synonymous with “not done” leads to flawed analysis, weak opinions, and avoidable exclusion. Litigation demands nuance, not slogans. Documentation is evidence — but it is not the whole story, and it is never the final word.

The following table illustrates how widely accepted habit-evidence principles are across U.S. jurisdictions, underscoring that this is not a narrow or technical exception

**TABLE: STATE EQUIVALENTS TO FRE 406**

	State	Equivalent Rule or Source	Alignment with FRE 406	Notes
1.	Alabama	Ala. R. Evid. 406	Nearly identical	Modeled on FRE 406
2.	Alaska	Alaska R. Evid. 406	Nearly identical	—
3.	Arizona	Ariz. R. Evid. 406	Nearly identical	—
4.	Arkansas	Ark. R. Evid. 406	Nearly identical	—
5.	California	Cal. Evid. Code §1105	Similar but distinct	Uses its own structure
6.	Colorado	Colo. R. Evid. 406	Nearly identical	—
7.	Connecticut	Conn. Code Evid. §4-6	Nearly identical	—

	<b>State</b>	<b>Equivalent Rule or Source</b>	<b>Alignment with FRE 406</b>	<b>Notes</b>
8.	Delaware	Del. R. Evid. 406	Nearly identical	—
9.	Florida	Fla. Stat. §90.406	Similar	Slight wording differences
10.	Georgia	O.C.G.A. §24-4-406	Similar	Georgia-specific commentary
11.	Hawaii	Haw. R. Evid. 406	Nearly identical	—
12.	Idaho	Idaho R. Evid. 406	Nearly identical	—
13.	Illinois	Ill. R. Evid. 406	Similar	Based on common law
14.	Indiana	Ind. R. Evid. 406	Nearly identical	—
15.	Iowa	Iowa R. Evid. 5.406	Nearly identical	—
16.	Kansas	K.S.A. 60-449, 60-450	Similar but more detailed	Statutory structure differs
17.	Kentucky	Ky. R. Evid. 406	Nearly identical	—
18.	Louisiana	La. Code Evid. art. 406	Nearly identical	—
19.	Maine	Me. R. Evid. 406	Nearly identical	—
20.	Maryland	Md. R. Evid. 5-406	Nearly identical	—
21.	Massachusetts	Guide to Evid. §406	Similar	Not a formal code
22.	Michigan	Mich. R. Evid. 406	Similar	Michigan-specific commentary
23.	Minnesota	Minn. R. Evid. 406	Nearly identical	—
24.	Mississippi	Miss. R. Evid. 406	Nearly identical	—
25.	Missouri	Mo. R. Evid. 406	Nearly identical	—
26.	Montana	Mont. R. Evid. 406	Nearly identical	—
27.	Nebraska	Neb. Rev. Stat. §27-406	Nearly identical	—
28.	Nevada	Nev. Rev. Stat. §48.059	Nearly identical	—

	<b>State</b>	<b>Equivalent Rule or Source</b>	<b>Alignment with FRE 406</b>	<b>Notes</b>
29.	New Hampshire	N.H. R. Evid. 406	Nearly identical	—
30.	New Jersey	N.J. R. Evid. 406	Nearly identical	—
31.	New Mexico	N.M. R. Evid. 11-406	Nearly identical	—
32.	New York	Case law (e.g., Halloran)	Similar	No codified rule
33.	North Carolina	N.C. R. Evid. 406	Nearly identical	—
34.	North Dakota	N.D. R. Evid. 406	Nearly identical	—
35.	Ohio	Ohio R. Evid. 406	Nearly identical	—
36.	Oklahoma	Okla. Stat. tit. 12, §2406	Nearly identical	—
37.	Oregon	Or. Evid. Code §40.060	Nearly identical	—
38.	Pennsylvania	Pa. R. Evid. 406	Similar	Additional commentary
39.	Rhode Island	R.I. R. Evid. 406	Nearly identical	—
40.	South Carolina	S.C. R. Evid. 406	Nearly identical	Common-law influence remains
41.	South Dakota	S.D. Codified Laws §19-19-406	Nearly identical	—
42.	Tennessee	Tenn. R. Evid. 406	Nearly identical	—
43.	Texas	Tex. R. Evid. 406	Nearly identical	—
44.	Utah	Utah R. Evid. 406	Nearly identical	—
45.	Vermont	Vt. R. Evid. 406	Nearly identical	—
46.	Virginia	Case law	Similar	No codified rule
47.	Washington	Wash. R. Evid. 406	Nearly identical	—
48.	West Virginia	W. Va. R. Evid. 406	Nearly identical	—
49.	Wisconsin	Wis. Stat. §904.06	Nearly identical	—

	State	Equivalent Rule or Source	Alignment with FRE 406	Notes
50.	Wyoming	Wyo. R. Evid. 406	Nearly identical	—

## NOTES

"Nearly identical" indicates the rule is modeled directly on the Federal Rules of Evidence.

"Similar" indicates functional equivalence with differences in structure, wording, or reliance on case law.

States without a codified rule still admit habit evidence under longstanding common-law principles.

The table groups states into three categories. Counting each state once:

1. States with rules nearly identical to FRE 406

- 41 states
- These are the jurisdictions that adopted the Federal Rules of Evidence model almost verbatim.

2. States with similar rules but notable variations

- 9 states
- These are: California, Florida, Georgia, Illinois, Kansas, Michigan, New York, Pennsylvania, Virginia.

3. States relying primarily on common law

- These are already included in the 9 above (NY, VA, MA partially, SC partially). They are not additional states — they overlap.