

Risk Tip: Deposition Testimony

It's happened. You've been sued.

Now the plaintiff's attorney wants your deposition, and your attorney tells you this is a statement under oath about what happened. Your attorney has told you that in a deposition you must answer only what you are asked and keep your answers short—no educating the plaintiff's attorney and no volunteering information.

A Few Practical Tips:

1. **Always tell the truth.** You are under oath, and lying would be perjury. Work with your attorney before the deposition to discuss areas of the case or your care that concern you and decide together how to answer the anticipated difficult questions.
2. **Listen carefully to what you are being asked and answer only what you are being asked.** Example: Do you know what time it is? If you answered "10 a.m.," you lose. Your answer should be: "Yes, I know what time it is." Wait until you are asked what time it is before you give this answer.
3. **Pause and count to three before you answer.** This gives your attorney time to object. If this occurs, listen to the objection. Your attorney will give you the reason for the objection, such as confusing, multi-part, vague or asked and answered.
4. **If you don't know the answer to a question, say so.** Don't guess at what the answer might be or should be. For example, "Didn't your neurology consultant, Dr. Z., believe the patient had a cardiac problem?" Unless there is a specific note in the chart, you don't know what Dr. Z. believed. That's speculation. This is different from "The patient's hematocrit was elevated on June 9, 2010, right?" That's a fact, and there should be a lab result to confirm the higher hematocrit. You can agree to facts.
5. **Nothing — no textbook, no article, no journal and no online site — is authoritative.** You use your background, training, education and experience along with the articles or textbooks to determine how to treat a patient or patient's condition. You don't rely on them; You simply find some parts useful.
6. **With very rare exceptions, don't criticize the care given by others.** The exception is if they have been dismissed from the case or the statute of limitations has run. Your attorney will know if that is the case. Know that if you criticize another doctor's or nurse's care, they and their experts will come right back at you. Suddenly, you will be fighting with a co-defendant, as well as the plaintiff's attorney. This will not help your case.
7. **It is perfectly acceptable not to remember something.** If you are asked about a fact, or a conversation with someone such as the patient, his family or another doctor or nurse, and you don't recall that discussion, say so. Don't try to pretend to remember when you don't. Never assume that you remember the conversation.
8. **Don't get defensive.** Be polite and calm at all times and don't let the plaintiff's attorney annoy you. When annoyed, people often say things they regret. 9. You always have the right to talk to your attorney. The plaintiff will object if a question is pending but take your attorney's lead and either answer or leave the room to have a discussion with your lawyer.

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Be prepared by knowing your deposition testimony and medical records inside and out. Your deposition testimony will be your blueprint for your trial testimony. Yes, I know you are hoping the case never goes to trial. Your attorney is hoping that, too. But we attorneys are a pessimistic group. We plan for the worst. In fact, our entire work up of the case will have two goals, the first being to get the case dismissed, and the second being to prepare the case for trial.

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