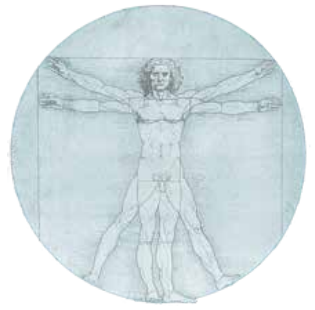


# Depositions: How To Handle Yourself & Develop Your Court Face

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Depositions for medico-legal matters take place in a variety of settings, and for a variety of reasons. A deposition may be involved for a No Fault accident investigation or settlement arbitration, for Workers Compensation claims, in order to determine a claimant's disability level or need for treatment, for Third Party actions and, most famously, in cases of medical malpractice or sexual harassment. How you manage yourself in a deposition can have a huge impact on the outcome of a deposition.

Standard legal advice applies here: Sit upright; keep your hands in your lap; always answer questions in short, concise sentences, and never extemporize or add more to your answer than was asked. This can lead to an opposing attorney taking something you said, and using it against you, or finding an opening to lower your credibility, or have you seem less clear and expert in the matter being discussed. If you do not know the answer to a question, or you are not sure, say so, and do not make up an answer in order to seem more expert.

In cases of medical malpractice, the deposition is often the step in between a medical narrative report and a trial. The opposing law firm wants to find out whether a trial is warranted, or whether a settlement is in the best interests of their client. As such, the opposing attorney is going to ask questions that would very likely come up again in a trial, to find out how you would answer in a court of law. Are you cogent in your answers, and persuasive? Do you come across as approachable, charming, defensive or professional? How will a jury see you? Having a well-composed style, a clear delivery and a professional demeanor all help your client's case. Dress smart, and talk smart! Do not speak out of turn, and do not ask the opposing attorney questions, or make comments that are

editorial in nature. A good deposition will lead to an opposing attorney choosing to have their client settle the case at hand, because you come across as professional and credible, and because you are able to make a very good case for your client, one that a jury will agree with. Likewise, it is an opportunity for you to take stock of the other side, and to have a good sense of what the opposing attorney is likely to ask you in court, and what tactics they will use, as well as the lawyer's general style of inquiry, professionalism and attitude towards you as a legal expert. As such, it is a great dress rehearsal, and a pre-game warm-up all in one!

Being well prepared cannot be stressed enough. When the case is like a script you know by heart, you can really engage the case better, and speak with clarity and credibility. A good attorney will speak to you before and after a deposition. Before the deposition, the lawyer should be going over what questions you are likely to be asked, and what strategy he or she is planning on, as well as what strategy they feel the opposing attorney has in mind. In medical malpractice cases, it may not always be what you, as a doctor, feel even matters to a case. When this happens, discuss it with the lawyer, because it can clarify why they are taking the tack they do, or may change their approach strategy. After a deposition, get feedback from the lawyer you worked with. How did you do? Were there any answers that were problematic, or where you need to study the case more?

Each deposition you do makes you better at being an expert witness, and more comfortable, whether in an arbitration, a deposition at a lawyer's office, or in court itself. When you are in court, take account of

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the judge. Be on time! Don't ask questions in court. As a witness, you are allowed to answer questions from a lawyer, not ask them. Every judge is different, but no judge likes to have their time wasted, because they are very busy at the best of times.

In most cases, if you are an expert witness, your most valued material support is your written report about a patient, whether it is an Independent Examination Report (IME) or a medical narrative, based on a medical file, with or without having examined or treated the patient yourself. As such, your reports need to be very thorough and concise, especially in cases of malpractice, where the medical file may be quite large, and include many different treating doctors. A complete and professional narrative report allows you to give a professional and convincing deposition without sorting through piles of medical reports and information. It should include a clear list of everything you reviewed in coming to a professional medical opinion: office notes, hospital notes, accident reports and the results of any diagnostic tests. Keep clear dates and date ranges for every item reviewed! This can become a problem in a deposition, when you are apt to come across as unclear about dates and time frames.

If you reviewed any reports from other expert witnesses, especially for the other side in a case, make sure you have it in your report, and be ready to answer questions about that report, and why your opinions differ, if they do. If you reference any professional materials, such as textbooks or peer-reviewed journal articles, it is ideal to have copies of these available at the deposition.

Always bring a copy of your Curriculum Vitae to a deposition. It is very likely that the first party of the deposition will go over this resume, in order to make sure you are qualified to be present as an expert witness, and to give your expert opinion on the matters at hand. Use every deposition to learn more about the best way to behave and be effective in legal set-

tings, and keep a log of every deposition, regarding the date, place and matter involved. This list is very useful in future depositions, where you are likely to be asked how often you have been deposed, where, when and why.

It goes without saying that being polite, taking your time in answering questions and being clear are all very helpful in court or at any deposition. If a question is not clear to you, ask to have it explained or re-phrased. When you feel unsure about an answer, slow down and think about it. Do not feel you need to rush or answer right away in order to come across as expert in the case at hand. It will come across as thoughtful if you take time where it is warranted. Remember that you are not just answering questions with facts, but with your medical expertise and thinking: how you came to the conclusions you did in a case.

The most important aspect of your deposition, and the one which will decide whether a case is settled or decided in your client's favor in court, is whether a doctor who is being sued for medical malpractice has not met the medical standard of his or her profession. That is, even if a patient was injured by a treating doctor (which is likely to result in some form of settlement), that does not automatically mean that the treating doctor was negligent. They may have injured a patient, but done everything a licensed doctor is expected and required to do under the specific circumstances, by law.

That could mean that they incorporated a letter-perfect consultation and examination, had perfect informed consent, a reasonable differential diagnosis and treating diagnosis, and a clear and cogent treatment plan, with a treatment that was carried out professionally and with good medical technique. In such a case, the doctor may be held responsible in a settlement to take responsibility for any injury to the patient, but may still not be found guilty of medical negligence or malpractice. In such a case, there was

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truly an accident. That is not the same thing as a case where such an accident was the result of either poor technique on the part of the treating doctor, overlooked information, an improper diagnosis, the lack of a medically necessary diagnostic test, or using a poor standard in choosing a patient for a particular medical technique. Any of these conditions could bring about a guilty finding of medical malpractice in a court of law.

As such, it is imperative that you are clear about the professional standards of care and ethics in your specialty, based on state and national guidelines, and using recognized medical algorithms regarding presenting complaints, consultation and examination findings, diagnostic testing, diagnosis and treatment protocols. Always reference what guidelines were involved in your analysis and opinion, and be prepared to defend their choice in your reportage.

Finally, opposing attorneys sometimes use every opportunity to try and throw you off of your game, to get you riled up, angry and emotional. It makes you look unprofessional, impulsive and unreliable in court. Don't let it work on you! Use what I call the Third Law of Court Self-Management: however much an opposing lawyer is speeding up, becoming aggressive or getting loud; slow down, relax and get quieter and softer in an equal amount. Use your breathing to do this. This will make you seem twice as professional and expert, and it only makes the attorney look less professional. Use time and space as your friends in the deposition setting.

Depositions are a great tool for making your medical opinion count, and for helping your clients. Being cool, professional and knowledgeable will pay off in cases settled or won, and in getting more legal witness work in the future.