

Tips for Having a Successful Deposition

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You have just received a subpoena from the opposing council, who wants your opinion regarding the care given to your patient. You have never been in a deposition before and are not sure what to do. Don't panic! The following guidelines can help you.

Attorneys are trained, both in school and in practice, to read people. The attorney looks for your body position and body language; the tone of your voice; the nature of your eye contact; etc. These and other clues give the attorney ammunition to discredit or minimize your opinion. Don't let it happen. The most important point you can make is to be credible, both at the deposition and at trial.

The opposing attorney's job is to discredit your opinions. When the attorney asks you a question, be clear as to the specifics of the question. It is OK to ask that the question be rephrased or clarified.

Some questions asked will be vague to put you off guard and be used later in the deposition or at trial. For example:

Attorney: Did the patient say that they hurt their arm?

Notice that the attorney did not specify the injured right arm or the uninjured left arm. You and the attorney may be speaking about two different areas. Your response should be:

You: Which arm are you referring to?

This way, you and the attorney are speaking about the same arm. If you didn't clarify the question, the attorney may say at trial, "In deposition, you said the patient did not report any problem with the arm." You would have had to explain the answer, and thus you wouldn't appear as clear or confident. This places the shadow of doubt over your testimony.

Always answer the question fully, but do not elaborate. Any additional information over the full answer may come back to hurt you. The opposing attorney can use additional information to open another avenue of questioning that can cloud your credibility. Some questions may require you to look at your notes before you answer. You are allowed to do so. After all, this is not a memory game.

When the attorney asks a question, pause for a moment prior to answering. This does two things: it lets you collect your thoughts and allows you to control the tempo of the questions. A common trick used by attorneys is to hurry the pace, thus forcing you to not think an answer through or volunteer damaging testimony. Do not guess at an answer, but give your best estimate. For example:

Attorney: Based on the damage to the car, what speed was the car traveling at the time of impact?

You: Based on the vehicle damage, the accident reconstructionist report, and my physical exam of the patient, my best estimate is 35 miles per hour.

You are allowed to take breaks. I recommend that every 50 minutes, you take a 10 minute break to collect your thoughts, get a glass of water, eat, use the restroom, etc. It's a great way to keep your head clear and stay objective.

Answer the questions with a "yes" or "no" or "yes, sir" or "no, sir" instead of "nah," "yeah" or "uh huh." The court reporter will record what is said. If you said "Uh huh," that's what will appear in the record. One does not look as credible with this type of verbiage.

You are not alone in the process. In most cases, attorneys representing your patient will meet you by phone or in person shortly before the deposition to bring you up to speed for the issues at hand and what to expect. The patient's attorney will be present at the deposition and will have the ability to object to any inappropriate or unclear questions from the opposing council.

Giving depositions can feel a lot like taking state board examinations. With practice, however, it will become easier and easier.

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