

Deposition Testimony -- Follow These Rules

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Editor's Note: This article's authors, Attorneys C. Jacob Ladenheim and Robert P. Sherman, along with Louis Sportelli, DC, are editors of The Chiropractic Legal Update. They and Judge Louis K. Campbell are co-authors of numerous articles and leading books on chiropractic legal matters including: The Chiropractic Form and Sample Letter Book; Risk Management in Chiropractic; and A Synopsis of the Mercy Guidelines.

Doctors of chiropractic are frequently called upon to provide testimony during depositions in personal injury cases. Doctors should keep the following suggestions in mind when testifying:

1. Just answer the questions. The deposition is no place for the doctor to attempt to display the vastness of his knowledge. If the response to a question needs no elaboration, a simple "yes" or "no" is perfectly acceptable.
2. Don't feel compelled to answer every question. Ego compels many doctors who do not know an answer to attempt to "bluff their way through." An "I don't know" is preferable to a blunder. In fact, candidly admitting any unfamiliarity (with treatises for example) will actually add credibility when the doctor is positive and confident in his assertion: "I most certainly do recall this patient and the instructions that I gave him."
3. Ask for clarification. Some questions may be intentionally vague or subject to interpretation. If the doctor does not clearly understand the question he should not attempt to answer. There is absolutely nothing wrong with asking the attorney to rephrase his question.

Attorneys are also not above inquiring about the authority of a long repudiated or discredited text to see if the doctor is either truly ignorant or so afraid of appearing ignorant that he will feign familiarity with a non-existent text rather than admit that he has never heard of it.

4. Take your time. Long pauses between the question and answer at trial will cast doubt on a witness' credibility and suggest that he either has a poor memory or is attempting to formulate an answer which "sounds good." While witnesses should avoid interminable pauses at deposition, a longer than conversational pause between question and answer affords the doctor an opportunity to consider responses carefully. That pause will not be revealed by the transcript.

Moreover, rapid and/or indistinct testimony is very difficult to understand and can lead to reporting and transcription errors in the record.

5. Respond without gestures. Unspoken responses (nodding, facial expressions or showing location or size with hand gestures) cause delay and confusion. If the reporter is confronted with both lawyers talking while the witness is testifying and pointing to the back of his neck,

an accurate transcript is unlikely! The doctor should help the reporter do the best possible job by speaking slowly and distinctly and by spelling names and technical terms. If one of the attorneys starts talking, a good witness will stop and not continue until instructed to do so by counsel.

6. Be comfortable with silence. Some lawyers will pause and review notes, shuffle papers, or just sit quietly in the middle of questioning simply to make the doctor uncomfortable. The doctor must learn to accept long delays without becoming impatient or agitated. Doctors should use such opportunities to compose their own thoughts or to stand, stretch or employ other relaxation techniques.
7. Do not become combative and confrontational. While doctors cannot and should not allow themselves to be bullied and intimidated by counsel, they must avoid the temptation to respond in kind to what they perceive as a personal attack. The doctor's reaction is going to be recorded and can conceivably be introduced into evidence and read to the jury.
8. Do not "waive signature." The deponent has the right to review a transcript of his deposition for accuracy before signing it. This is not intended to be an opportunity to change answers but rather to correct the record if it does not accurately report what was said. A deponent may decline this option and simply authorize the court reporter to sign the deposition in his behalf. The likelihood of errors in a transcript of many hours of testimony is particularly high in cases involving technical terminology and anatomical references. The potential embarrassment of a glaring error in a deposition that is read in court more than warrants reviewing it before signing.

If errors are made, not in transcription but in the answers given, many states and the federal rules afford the deponent an opportunity, not to change the original testimony, but to attach a correction sheet together with an explanation for the change. Witnesses should use this device when necessary.

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