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Reference Guide for Deposition Involvement

In your capacity as a healthcare provider or business owner, an attorney for an injured patient may seek to take your deposition. A deposition is a legal proceeding during which an attorney will ask you questions under oath and before a court reporter. This reference guide imparts practical advice to help prepare you for the experience and ease the anxiety that often surrounds the deposition process.

As soon as you receive notice of a deposition request, inform your manager and/or insurance representative. Depositions are time sensitive matters, so swift communication is important. Since a deposition is conducted under penalty of perjury, and could potentially lead to litigation against you if a lawsuit has not yet been filed, your employer or insurance representative will assist you in retaining legal counsel to adequately represent you in the matter. Counsel will subsequently discuss the case with you and prepare you for what to expect.

Although depositions can be stressful events, you have essential rights as a witness that can be exercised at any time during the proceeding. Commonly referred to as the Witness Bill of Rights, a questioner is required to honor the following entitlements, which are based on fairness and common courtesy:

1. The right to understand the question before responding.
2. The right to hear all parts of the question clearly before answering, and to request that the question be repeated if necessary.
3. The right to correct any misstatement.
4. The right to understand the specific time period of an event that is the subject of the question.
5. The right to be sure of an answer rather than having to speculate.
6. The right to refrain from answering questions based on inaccurate assumptions or inaccurate information.
7. The right to not recall every detail of an event.
8. The right to disagree with the conclusion the questioner has reached.
9. The right to answer only one question at a time.
10. The right to control the pace of the examination.

Depositions are time sensitive matters, so swift communication to your employer and/or insurance representative of your receipt of a notice for deposition is essential to adequate legal representation.

Most depositions involving named defendants are pivotal events in a professional liability lawsuit and therefore will require thorough preparation to ensure you remain confident, relaxed and in control during questioning. The following is a summary of essential tips for a successful deposition.

Be honest. Answer every question honestly. Your testimony is taken under penalty of perjury, so it is important to ensure that responses are truthful and accurate. The interrogating attorney will form an impression of what kind of witness you are likely to be in front of a jury or arbitrator. Juries typically trust and accept the testimony of witnesses they like.

Listen carefully to the question before you answer. Questions can often be confusing. If a question is unclear, too broad, vague or unintelligible, politely ask the attorney to repeat the question, clarify it or rephrase it.

Do not hurry to answer a question. Pause to make sure you understand the question and think about your answer before you respond. Do not let anyone rush the pace of your answers or prevent you from giving a full and complete answer to the question.

Do not guess. If you are not sure of the answer to a question, say so. Guessing or speculating may create problems for your defense. If you do not remember a detail, respond by stating "I don't remember," "That is all I recall at this time" or "To the best of my recollection that is how the event transpired."

Do not volunteer information unless it is responsive to a question. Remember that the deposition is a series of questions and answers. Your job is to answer the question honestly and directly. Most questions call for a simple "yes" or "no" response, or a single sentence answer. If you find yourself talking for more than a couple sentences, you may be volunteering information that is beyond the scope of the question.

Be professional at all times during the deposition. While most attorneys are courteous to witnesses, events occasionally unfold that precipitate an aggressive demeanor. Always take the high road and remain calm and polite.

Do not allow an attorney to inaccurately summarize your testimony. In the event this happens, refrain from responding in order to allow your attorney time to raise an objection; or in the alternative, politely correct the attorney.

Inform your attorney about any concerns you have before the deposition starts. If you have any concerns about questions that may be asked during the deposition, tell your attorney in advance. Such concerns may include aspects of your testimony that you might find embarrassing or difficult to explain.

Do not make jokes or be glib. What you intended as lighthearted humor during the deposition may not appear to be funny when the transcript of your deposition testimony is later read to the jury during a trial. Remember that the jury does not have the benefit of seeing your facial expression or hearing your tone of voice when a deposition transcript is read aloud.



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