

DEPOSITION TIPS

Getting noticed for a deposition can be a scary thing. Over the years the firm of McEwan, Martinez & Dukes in Orlando, FL, have put together some simple deposition “tips” to help doctors prepare for their deposition.

1. Tell the truth. This is more than a copybook maxim; it is a rule of self-preservation for witnesses. Assume that the examining counsel is supporting himself on his professional ability and that this includes the ability to make a witness who is playing fast and loose with the truth very uncomfortable. Further, you can repeat a true story over and over, where if there is a deviation, it will come out sooner or later.
2. Think before you speak. Allow five full seconds to elapse before beginning to answer the question. This allows counsel to formulate objections and further allows you to think through what your answers are going to be. You should realize that when you testify you are dictating an important document.
3. Answer the question. The examiner is entitled to an answer to the question which he asks, but only to that question.
4. Do not volunteer information. You are not there to educate the examiner.
5. Do not answer a question you do not understand. It is up to the examiner to frame intelligible questions; if he cannot do it, do not help him. Do not explain to the examiner that the question is incomprehensible because he has misunderstood words of art in your profession. Do not help the examiner by saying “do you mean X or do you mean Y.” You will be asked both of these questions.
6. Talk in full, complete sentences. Unless it is a simple question, the question should not be answered yes or no. Beware of questions containing double negatives.
7. You only know what you have seen or heard. Questions are often phrased “do you know?” A question on deposition may legitimately call for something you do not know, but it must be so phrased. There is a difference between a question which asks do you know, and a question which asks whether you have any information bearing on a particular subject.
8. Do not guess. If you do not know or cannot recall something, say so. This rule becomes more important and more difficult to follow when the examiner is scoring points or making it appear to you that only an idiot does not know the answer to the questions.
9. Be as specific or as vague as your memory allows, but do not be put in a position contrary to your true recollection. If you are asked when something occurred and you remember that it occurred on January 15, state January 15. If, on the other hand, you cannot recall the exact date, state the approximate date and say that it is approximate.

10. Do not explain your thought process as to how you reached the answer to a question. In answering a question to which your answer depends on your recollection and other facts not called for by the question; do not refer to these other facts in explaining how you can answer the question. In other words, if you are asked when a conversation with Mr. Jones occurred, and you recall that it had to be in December because you met Mr. Smith after Mr. Jones and that was in January, do not explain this thought process to the examiner.
11. In testifying concerning conversations, make it clear whether you are paraphrasing or quoting directly.
12. In answering questions calling for a complicated series of events or extensive conversations, summarize these where possible. The examiner, if he is doing his job properly, will ask for all the details. It is always possible the examiner will accept your summary and not ask additional questions.
13. Never characterize your own testimony. "In all candor," "honestly," "I'm doing the best I can," should never be used.
14. Avoid all adjectives and superlatives. "I never" or "I always" have a way of coming back to haunt you. There are times; however, when such words are appropriate and you can discuss this in your pre-deposition meeting.
15. Do not testify as to what other people know unless you are asked specifically for such a statement.
16. Do not testify as to your state of mind unless you are specifically asked. In other words, if the question is: "Did you read that document," the answer is: "Yes." Not "Yes, and I believe every word in it."
17. If information is in a document which is an exhibit, ask to see the document unless you are very certain of your answer.
18. If information is in a document which is not an exhibit at the deposition, answer the question if you can recall the answer. Do not tip off the examiner as to the existence of documents he does not know about. If you cannot answer the question without looking at a document which is not marked as an exhibit, you may simply answer the question by stating that you do not recall. If you can answer the question, do so. After a witness states he does not recall a fact which the examiner believes he should have knowledge of, the examiner will usually ask if there is a document which can refresh his recollection.
19. Do not let the examiner put words in your mouth. Do not accept his characterization of time, distances, personalities, events, etc. Rephrase the question into a sentence of your own using your own words.

20. Do not answer a compound question unless you are certain that you have all parts of it in your mind. If it is too complex to be held in your mind, it is too complex and ambiguous to answer.
21. Pay particular attention to the introductory clauses preceding the guts of the question. Leading questions are often preceded by the guts of the question. Leading questions are often preceded by statements which are either half true or contain facts which you do not know to be true. Do not let the examiner put you in the position of adopting these half truths or unknown facts on which he will then base further questions.
22. If you are interrupted, let the lawyer finish his interruption and then firmly but courteously state that you were interrupted, that you had not finished your prior answer to the previous question and then answer that question.
23. If you are caught in an inconsistency, do not collapse. What will happen next will depend upon what questions are asked of you. State, if asked, your present recollection. State the reason for the inconsistency only if you are asked. Rehabilitation is done at trial, or if appropriate, later in the deposition when your lawyer asks you questions.
24. Do not adopt an examiner's summary of your prior testimony.
25. If you are finished with an answer and that answer is complete and thoughtful, remain quiet and do not expand upon it. Do not add to your answer because the examiner looks at you expectantly. If the examiner asks you if that is all you recollect, say "yes" if that is the case.
26. Do not agree to supply any information or documents requested by the examiner. If reference is made to documents or information, the request is made to counsel. Counsel will either answer the request or will take the request under advisement.
27. If an objection is made to a question, listen to the objection very carefully. You may learn something about the question and how it should be handled from the objection.
28. Never express anger or argue with the examiner. If a deposition becomes unpleasant, your counsel will handle any problems.
29. Do not expect to testify without the other side scoring points. If the other side appears to you to be asking questions which call for answers that do not help your case, accept the fact that every lawsuit has two sides and sit back and take your punishment. Avoid the temptation to guess; expand on your answer where the expansion is called for, or, even worse, prevaricate.

30. Avoid any attempt at levity. Pomposity is the occupational disease of the legal profession; you will probably be hauled over the coals as not taking your solemn oath seriously if you make jokes or wisecracks.
31. Avoid even the mildest obscenity and avoid absolutely any ethnic slurs or references which could be considered as derogatory.
32. There is no such thing as “off the record.” If you have a conversation with anybody in the deposition room, be prepared for questions on that conversation.
33. If the examiner appears totally confused about your profession and its technical aspects, do not attempt to educate him.
34. If you do not remember something, so state. You may be asked if a statement or document refreshed your recollection. If it does, so state. If it does not, the answer remains that you do not remember. You may be asked whether there exists a document which may help you refresh your recollection.
35. Numerous documents are marked as exhibits at certain depositions. If you are asked about a document, read it before testifying. Do not make any comments whatsoever about the document except in answer to the question that elicits your testimony.
36. If you are hit with a flash of insight or recollection while testifying and this has not been previously discussed with your counsel, hold this to yourself, if possible, until you have had an opportunity to go over it with counsel.
37. Use all recesses to follow your lawyer to a place to confer in private.
38. Every witness makes mistakes during a deposition. Do not become upset if you find you have made one. If you realize you have made a mistake during the deposition, the mistake should be corrected as soon as it is realized. Mistakes you remember after the deposition is over may be corrected at the time you are to sign the transcript.
39. Please review your charts and other materials. Be familiar with any medication you prescribed or any diagnostic words that are listed on your notes.
40. Watch out for the plaintiff's attorney attempting to drive a wedge between you and your lawyer.
41. If you do not recall your procedure, you can always respond with “My standard practice is,” and give the standard practice that you use on that particular situation.
42. Hypothetical questions are double-edged swords. The best way to attack a hypothetical question is to either make it never be this case or assume that he is referring to this case. Ask your lawyer in your pre-deposition meeting how to deal with hypothetical questions. Have a firm grip on how to deal with these type of questions.

43. Please bring with you at the time of your deposition, the full and complete original chart from your office on the patient.