


simple themes

56  **Depo Tips: Opposing Attorney's Perspective – cont'd**  
**Basics – cont'd**

Defending depositions – cont'd

- After you have reviewed the key facts of the case and oriented the witness you need to let them know how to conduct themselves in a deposition
- If they haven't given a deposition before (or even if they have), they need some simple guidelines that they can remember easily
- If you give them ten things to remember then the odds are that they won't remember anything
- It's best to give them just one or two things to mull over

57  **Depo Tips: Opposing Attorney's Perspective – cont'd**  
**Basics – cont'd**

Defending depositions – cont'd

- First, tell them that they are simply being asked to give a truthful account of what happened so if they just say what they know they'll be fine
- Then tell them that the only problem is that sometimes people think that they know more than they do and wind up speculating and assuming things that they don't really know

58  **Depo Tips: Opposing Attorney's Perspective – cont'd**  
**Basics – cont'd**

Defending depositions – cont'd

- Tell the witness to listen carefully to the question and only ask the question that is being asked
- Don't assume things, and be quick to answer questions that have built-in assumptions
- The witness should remain calm and not get upset, even if the attorney starts asking questions in a pointed manner

59  **Depo Tips: Opposing Attorney's Perspective – cont'd**  
**Basics – cont'd**

Defending depositions – cont'd

- Lastly, tell them that short answers are best. If the question calls for a yes or no, answer with a yes or no
- If you need to explain you can, but keep your answers as short as you can
- Short, truthful answers. That's the key. And that's something they can remember.
  - usually

60  **Depo Tips: Opposing Attorney's Perspective – cont'd**  
**Basics – cont'd**

- Now that we have discussed the basics taught to attorneys, it pays to know what to expect and how to conduct yourself before you walk into the deposition room
- The following tips, gathered from experienced attorneys, should help you survive the process and – ideally - avoid a trial:

61  **Surviving a deposition – cont'd**

Be prepared

- Well before the deposition, carefully review all the documents, records, and references that are relevant to the case
- Then review them again just before the deposition to keep the details fresh in your mind
- Alert your attorney to any areas where you feel vulnerable or uncomfortable

62  **Surviving a deposition – cont'd**

Be prepared – cont'd

- Ideally, he should lead you through a mock interrogation (always request a pre deposition conference) using the tough questions you're likely to face
- That will expose weaknesses in your preparation, attitude, or mannerisms

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63  **Surviving a deposition – cont'd**

Take your time

- Once the opposing attorney begins his questioning, don't be afraid to collect your thoughts before answering
- Otherwise, you could blurt out an ill-considered response that could later hurt you

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64  **Surviving a deposition – cont'd**

Take your time – cont'd

- If the attorney pauses after you've responded, don't feel obliged to fill the empty space with additional details
- Just wait for the next question
- If you don't know the answer, or aren't sure, say so

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65  **Surviving a deposition – cont'd**

Take your time – cont'd

- If a question is legitimate, you're required to answer it
- But if it seems outside the scope of the lawsuit, give your attorney time to object
- If the question isn't clear, ask for clarification. If it seems tricky, take time to consider it carefully
- That will also give your attorney a chance to object to the way the question is phrased, thereby alerting you to potential hazards  
– for instance, he may say, "You're asking the doctor to speculate"

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66  **Surviving a deposition – cont'd**

Take your time – cont'd

- The opposing attorney may try to confuse you with rapid-fire questions that seem innocuous, but might contain suppositions that could be damaging if you agree with them too hastily
- Don't be afraid to ask him to repeat the question slowly
- If after several hours of grilling you feel tired, ask for a break
- That's better than inadvertently admitting something under pressure that will damage your testimony

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67  **Surviving a deposition – cont'd**

Keep it short

- Opposing attorneys are always fishing for information that will help their case or harm yours
- So keep your answers brief and to the point, and don't volunteer information that isn't solicited
- What you don't say can't hurt you

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68  **Surviving a deposition – cont'd**

Keep it short – cont'd

- A defense attorney from Waynesboro, PA, recalls many doctors who couldn't follow that advice

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- "I've had depositions where I've had to kick my clients under the table to get them to shut up," she says. "But some of them still won't get the hint, so I've had to take them out of the room and tell them I'd drop their case if they didn't stop talking"

69  **Surviving a deposition – cont'd**

Keep it short – cont'd

- If the attorney's question seems clear, just answer Yes or No if you can, then stop
  - if you mean Yes, say so; don't say "Uh huh," or nod your head, which can be misinterpreted by the court reporter
- If an attorney asks a complex question and a simple response might be misleading, tell him you can't answer Yes or No
- With such questions, it's better to respond with complete sentences so that your answer is clear, and can't be used against you

70  **Surviving a deposition – cont'd**

Don't try to show how smart you are

- Some chiropractic providers seem to think the goal in a deposition is to score points against the opposing attorney
- It's not
- That's the attorneys' job
  - if and when the case goes to trial
- And don't assume you're smarter than the opposing attorney
- Remember, you're trained as a doctor, not as a lawyer
- No matter how much you know about chiropractic, you're not an expert on law

71  **Surviving a deposition – cont'd**

Don't try to show how smart you are – cont'd

- Experienced attorneys are well aware that most doctors, including chiropractic providers, hate to say, "I don't know"
- Rather than admit to ignorance about some chiropractic issue, they'll try to answer the question

72  **Surviving a deposition – cont'd**

Don't try to show how smart you are – cont'd

- A Philadelphia attorney recalls one client who contradicted himself badly while discussing topics he didn't know well
- When I asked him about it afterward, "he said he didn't want to look stupid
- "Congratulations," I told him. "Now you don't look stupid. You just look negligent."

73  **Surviving a deposition – cont'd**

Check your arrogance at the door

- Given their years of training and experience, doctors, in general, tend to resent having their judgment questioned by a non-physician
- They then respond to deposition questions by getting huffy and arrogant

- When an attorney is faced with such clients, he may consider settling an otherwise defensible case rather than going to trial and risk letting the doctor display his arrogance on the witness stand

74  **Surviving a deposition – cont'd**

Check your arrogance at the door – cont'd

- He recalls one case in which the patient claimed he'd been afraid to ask the chiropractic provider any questions because he was so arrogant
- When I called the doctor to discuss our strategy for his deposition, his response was, –“You're the lawyer, aren't you? Isn't that what you're getting paid for?”
- At that point, I figured the patient might have a valid complaint, and that we were going to have trouble

75  **Surviving a deposition – cont'd**

Check your arrogance at the door – cont'd

- A plaintiff's attorney from Wellesley, MA, looks for such arrogance when he questions doctors in a deposition
- If a doctor's really full of himself, it makes our case much easier because we know the jury will hate him
- His advice to doctors: "If you're sued, forget what you think about trial lawyers. Check your arrogance at the door, and follow your own attorney's advice

76  **Surviving a deposition – cont'd**

Don't let yourself be provoked

- Opposing attorneys purposely try to provoke chiropractic providers by questioning their diagnoses and treatment decisions
- When they do, your job is to remain cool and professional, even if it takes some effort

77  **Surviving a deposition – cont'd**

Don't let yourself be provoked – cont'd

- A defense attorney from Mattoon, IL, recalls a cardiologist who had recently been recognized as his state's "Doctor of the Year," and had an ego to match
- When this doctor had to appear for a deposition, his outrage was obvious
- As the plaintiff's lawyer began questioning his judgment, he reacted angrily: –“I'm a doctor. Are you?”
- Sensing an opportunity, the lawyer persisted, and the doctor erupted: –“Look, you have no business hauling me in here to answer your silly questions. I'm too busy for these games.”

78  **Surviving a deposition – cont'd**

Don't let yourself be provoked – cont'd

- Realizing how jurors would probably react to a defendant with such an attitude, the plaintiff's attorney refused to settle
- When the case came to trial, he had the doctor read that exchange from the deposition

- transcript
- Along with other evidence, it had the desired effect
- The jury awarded the plaintiff nearly \$1 million

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79  **Surviving a deposition – cont'd**

Beware of authoritative references

- When an opposing attorney begins asking about the chiropractic/medical literature, he's not seeking your wisdom
- He's setting a trap for you
- If you agree that some 1,000-page text is the "bible" on the subject, you're already in trouble
- No one can practice in accordance with every single statement in an entire textbook

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80  **Surviving a deposition – cont'd**

Beware authoritative references – cont'd

- If you're not familiar with the text or article, it's safer to say so rather than pretend to know it and have your ignorance exposed
- If the text is current and widely used, you may want to agree that it's "generally considered reliable on the subject, but not necessarily in every situation"

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81  **Surviving a deposition – cont'd**

Beware authoritative references – cont'd

- The same caution applies if the opposing attorney tries to get you to agree with categorical statements that include such words as "all," "every," "always," or "never"
- That's when you should qualify your answer with something like, "Generally, I agree with that statement, but there are important exceptions. Let me explain."

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82  **Surviving a deposition – cont'd**

Beware authoritative references – cont'd

- If the opposing attorney cites some "authoritative" guidelines to question your treatment of the patient, point out that those are just general guidelines, and that, in your judgment, they don't apply to the specific conditions in this case
- Then explain why

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83  **Surviving a deposition – cont'd**

Remember: You may not be the expert

- No matter how much you think you know about what happened, remember that you may be at the deposition to testify as a fact witness or attending provider, not as an expert witness
- It may not be your job to define the standard of care in the case, or to argue about what should or shouldn't have been done
- Your job is simply to explain what you did and why

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84  **Surviving a deposition – cont'd**

Remember: You may not be the expert – cont'd

- It's also not the time to try to tell every detail of "your side" of the story
- If the case does go to trial, that's when you'll have a chance to present your version of what happened, under friendly questioning by your patient's lawyer

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85  **Surviving a deposition – cont'd**

Remember: You may not be the expert – cont'd

- Answer only those questions that refer to your own involvement with the case
- Commenting on what your colleagues did or should have done can make trouble for them and for you
- If you don't remember a particular incident, say so
- Don't speculate, and don't go beyond the facts in the chiropractic/medical record

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86  **Surviving a deposition – cont'd**

Remember: You may not be the expert – cont'd

- Don't assume you're "off the record"
- Some chiropractic providers think that saying, "This is off the record" will stop the court reporter from transcribing what follows
  - It won't
- Unless both lawyers agree to go off the record, the reporter will continue to transcribe your "private" comments

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87  **Surviving a deposition – cont'd**

Remember: You may not be the expert – cont'd

- That applies to side remarks to either attorney, and to what you say during breaks
  - bathroom
- If you want to talk in private, leave the deposition room

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88  **Surviving a deposition – cont'd**

Remember: You may not be the expert – cont'd

- The same warning holds for any documents, memos, or handwritten notes you bring to the deposition
- If you refer to such material to refresh your memory when responding to a question, the opposing attorney has the right to examine them

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89  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions

- During a pre-deposition conference (be sure to always request one), many attorneys prepare their chiropractic providers for the tricky questions opposing attorneys use to trap them
- Please be cautioned about the importance of considering your answers carefully because they can come back to haunt you later

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90  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions

- At trial, for example, the opposing attorney may read one of your answers from the deposition transcript, and then ask, "Isn't that what you said under oath, Doctor, in your deposition?"
- It's important to get it right the first time

91  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- Here are a number of the tricky questions that you may be asked with suggested responses:
- The hypothetical question
  - "Doctor, suppose a patient complains about a persistent pain in her abdomen. Would you agree that the standard of care requires you to...?"

92  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- If you simply answer "Yes," the attorney will use that later to show that you didn't follow the standard
- The proper response to such questions is: "I can't answer that based on the few facts you've given me. I'd need to actually see that patient and examine her first."

93  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The compound question
  - "Doctor, would you agree that hypertensive patients should be monitored for . . . at least once a month, and that if there's evidence of . . . then the correct approach is to . . . ?"

94  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The way to handle such double- or triple-jointed questions is to ask the lawyer, "Could you ask me those questions again, one at a time?"

95  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The double negative question
  - "Is it true that you didn't tell the patient that her shortness of breath wasn't significant?"

96  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- If you answer, "No," does that mean you didn't tell her, or that it wasn't significant?
- With such questions, it may not be clear what a Yes or No answer means
- So to avoid adding to the confusion, you might respond: "Let me restate your question to make sure I understand it."

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97  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The leading question
  - "What did you do, Doctor, when it became clear to you that your patient was suffering from . . . ?"

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98  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The correct response
  - "I'm not sure that it was clear to me at the time." or
  - "I'm sorry, I don't agree with your premise. Here's why."

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99  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The paraphrasing trick
  - "Doctor, as I understand it, what you're really saying is that the patient . . ."

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100  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- If that's not what you meant, your response should be: "No, that's not an accurate summary of what I just said."

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101  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The guidelines ploy
  - "Doctor, the following guidelines are authoritative on this issue, aren't they?"

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102  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- Your response: "Those are just general guidelines for most patients with this condition. But they're not authoritative regarding this particular patient. The reason they don't apply in this case was . . ."

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103  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The invitation to speculate
  - "Doctor, would you say that patients with those symptoms should be referred to a cardiologist?"



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104  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- Your response: "I really can't speculate based on that limited information. I'd just be guessing."

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105  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The dangerous possibility
  - "Doctor, isn't it possible that the patient could have been suffering from . . . ?"

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106  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- "Theoretically that's possible, but I don't believe there was any reasonable likelihood of it in this case."

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107  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The rapid-fire method: If the attorney bombards you with a series of questions, without giving you a chance to respond fully, interrupt and tell him, "I'm sorry, I haven't finished answering your first question. Would you please repeat it slowly?"

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108  **Surviving a deposition – cont'd**

Sneaky Lawyer Questions – cont'd

- The "just answer Yes or No" approach
  - If the question is complex or difficult, feel free to say, "I can't answer that question with a simple Yes or No. Let me explain why"
  - If you don't understand the question, say so

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109  **Surviving a deposition – cont'd**

Want to learn more?

- The Council on Forensic Sciences (CFS; <http://www.forensic-sciences.org>), an affiliate of the American Chiropractic Association (ACA), offers additional training in deposition and court testimony and other medicolegal issues online at <http://www.ChiroCredit.com>
- Their examining board (American Board of Forensic Professionals (ABFP)) extends advanced standing to those holding chiropractic diplomate status towards the forensic subspecialty (DABFP)
- For additional information go to their website at <http://www.forensic-sciences.org>

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110  **Questions?**