

Depositions: An Overview and General Suggestions

What a Deposition Is and What a Deposition Is Not.

A deposition is a formal court proceeding where a lawyer for the plaintiff can ask you a wide-range of questions. While the questions should have some relationship to the case, the plaintiff's lawyer is given wide latitude and some questions in a deposition can seem like a fishing expedition. Your lawyer can object, but most of the time you will have to answer the questions anyway because a judge is not present to rule on the objections. In some limited circumstances your lawyer might "instruct" you not to answer. If that happens, you should follow your lawyer's advice. On rare occasions, the judge is called to rule on objections.

Your answers are given under an oath, just as at a trial, and in most situations the transcript can be used at a trial just as if you gave that testimony in court. This is the main way that lawyers learn the important facts of the case and try to obtain concessions and "sound bites" to help their side of the case.

A deposition is usually taken in the office of your lawyer or in a conference room where you work. It is usually attended only by the lawyers in the case, but a named party (including you and the plaintiffs), and representatives of named organizations (like a clinic, hospital or insurance company) can also attend. A deposition is not generally open to the public, the press or witnesses who have not yet been deposed.

A deposition is usually taken just by a court reporter. Some plaintiff's lawyers will also arrange for a videographer to videotape the deposition and preserve your testimony visually. Your lawyer will know in advance if your deposition will be videotaped and will prepare you if that is going to happen.

The deposition is a time when you must truthfully answer the questions that are asked, unless your lawyer objects and instructs you to not answer; but you do not have to volunteer information that the lawyer does not ask about. If your lawyer objects to a question you should stop talking and wait for your lawyer to tell you whether or not you have to give an answer. Most of the times when objections are made you will still be required to answer the question. When that happens it is OK to ask for the question to be repeated, and that is usually recommended so you answer the correct question.

A deposition is unlike a normal social conversation. It is a formal question and answer session in which you must pay careful attention to the precise words of each question before you give an answer; this requires a high level of concentration and an “active” manner of listening unlike other types of conversations.

As a defendant, it is certain that you will be deposed. Your deposition is a key part of the case, so it is essential that you prepare thoroughly with your lawyer.

Will the plaintiff drop the case after hearing what you have to say?

While it is tempting to think that the case should go away once you have “explained” what you did and why, that is not going to happen, at least not very often. By the time you are deposed the plaintiff’s lawyer has already gone over the medical records in detail and should have had the case reviewed by experts, some of whom are supposedly critical of your care. By taking your deposition the plaintiff’s lawyer is mainly trying to pin down your testimony to avoid surprises at trial and to obtain more facts about the case to provide to the expert witnesses who are reviewing the case for the plaintiffs.

Are there general rules for preparing for and giving a deposition?

1. Review the medical records and refresh your memory about the medical facts of the case. Then meet with your lawyer and spend as much time as you need to feel comfortable about the facts of the case, medical issues that will likely be discussed and general rules for how to handle questions at the deposition. But a deposition is not a memory test and you should not hesitate to ask to see the medical records to be sure you base your testimony on the facts of the case.

2. Discuss with your lawyer the type of questions that the plaintiff’s lawyer will likely ask.

3. You should not do a literature search or talk with others about the case unless you discuss that with your lawyer. You can be asked about documents you have reviewed and conversations you have had about the case, except of course for conversations with your lawyer which are privileged and about peer-review proceedings.

4. Practice “active listening,” where you concentrate closely, pay careful attention to the precise words of a question and provide a truthful answer to the literal words of the question.

5. Practice self-control. One of the main goals of the plaintiff’s lawyer is to evaluate you as a witness. If the lawyer concludes that you have a quick temper, give evasive answers or are rude and unlikeable, that will give the lawyer a perceived advantage to use at trial. You need to be polite and respectful regardless of how the lawyer acts toward you.

6. Anticipate that you will feel frustrated during and at the end of the deposition, that you will think you did not have a chance to fully tell your story and that the plaintiff’s lawyer failed to understand your point of view. The plaintiff’s lawyer is not trying to understand your point of view. He or she is trying to get testimony to help the plaintiff win the case.

7. Be rested and relaxed. A deposition, which can be a stressful situation, should not be done when you are hungry, tired or distracted. It is OK to take breaks, and you should do that as necessary to stay refreshed and attentive.

Things to Consider Before Answering a Deposition Question:

1. **Do you understand the question?** That means that “as literally asked” do you understand the question? Don’t interpret what you think the lawyer means to say. If the question as asked is confusing, say so and wait until a new question is asked.

2. **Do you know the answer?** Note that this is different from thinking that “maybe” you know the answer, or that you “assume” that you know the answer. If you truly “know” the answer, then you should give it. If you don’t know the answer and you would be guessing or speculating, then the best answer is to say you don’t know.

3. **Is the question within your area of expertise?** You can be asked technical questions, some of which may be directly within your area of specialization and some that are not. While you might think you know answers to questions that are outside your area of concentration, it is likely that others are more qualified in those areas, so you should decline to answer questions that are outside your expertise.

4. **Does the question contain inaccuracies or misleading facts?** Before answering a question that refers to specific medical facts, be sure that those statements are accurate and literally correct. This is another example of a situation where careful listening is crucial and where you should take the time to verify facts from the record unless you are absolutely certain that the facts as stated in the question are accurate.

5. **Does the question contain inflammatory words?** You do not have to agree with or accept the words that were used by the plaintiff's lawyer in a question, especially if they are inflammatory or imply something with which you disagree. If that happens, you should use more neutral and accurate words in your answer. This is another point that you should discuss with your lawyer.

6. **Is the plaintiff's lawyer trying to put misleading words into your mouth?** Sometimes a lawyer will make a statement and ask if you agree or will summarize facts. You need to listen carefully to every word in the question. You should not agree unless you truly agree to every material word used by the lawyer. Otherwise the transcript may be used to prove something different from what you intended. You should be especially alert if the lawyer begins a question with "Isn't it true...;" "Wouldn't you agree that ...;" or "Would it be fair to say ...". By asking those types of questions the plaintiff's lawyer may be trying to get you to agree with or accept as true a statement that you don't fully agree with. That is why you need to pay careful attention to all of the words of every question and to take breaks if you start to feel fatigued.

Can you be forced to give expert opinions?

If you are named as a defendant, you must answer questions about the standard of care that applied to your involvement in the case; but as a general rule you have a qualified privilege to not give expert opinions about the care of others. If you are not named as a defendant you must answer questions about what you did, but the qualified privilege is more extensive, and it might allow you to decline to give expert opinions about any medical issue. This is a developing area of law in Wisconsin which you should discuss in your meetings with your lawyer before your deposition.