

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

THE LITIGATION PROCESS

DEPOSITIONS

Depositions are another component of the discovery process. A deposition is a formal question and answer session in which one party's attorney asks questions of the other party - or witnesses - under oath. Depositions are usually conducted in an attorney's office with a stenographer or court reporter recording the questions and answers. Depositions may also be videotaped. The purpose of a deposition is two-fold: to discover additional information, and to preserve the testimony for use at trial.

The party who is being deposed (deponent) will be questioned by the attorney for the opposing party in the lawsuit. The deponent will be represented at the deposition by his or her attorney who may object to inappropriate lines of questioning and to questions about issues deemed irrelevant to the case.

FREQUENTLY ASKED QUESTION

I'm being asked to give up an entire day to sit in a deposition. Can I bill the other side for my time?

Unfortunately, no. Being a defendant in a lawsuit is time-consuming, and it will be very difficult to get through the entire process without having to give up time during work hours. This is an inconvenience, to be sure, and it certainly adds insult to injury when you believe the case against you has no merit. However, as distasteful and unfair as this may be, it is inappropriate to bill the Plaintiff or his attorney for your time.

RISK MANAGEMENT TIPS

Do prepare for your deposition testimony. It is essential to prepare and review your testimony with your defense attorney. The plaintiff's attorney will be reviewing your transcribed testimony for any inconsistency in testimony, so preparation and honesty is essential for a successful deposition.

Knowledge of the treatment records is the key to a successful deposition. If you are prepared and familiar with the records your confidence and honesty will come across in the deposition and transcript.

Make certain you understand the question before answering. Do not be afraid to ask that the question be repeated or restated.

Think before answering a question. If you are unsure of an answer to a question, you may respond that you do not know or do not recall. Never guess at questions or try to rely on your memory when records that contain facts are available for review. The transcript of the deposition does not reflect the length of time it takes to answer a question. Take your time and answer only the question asked.

Keep answers short and to the point. Try to answer questions with a simple “yes” or “no”. Explanations tend to give the plaintiff’s attorney more information than needed and may prompt more questions. Of course, if an explanation is necessary, by all means, state it.

Do not allow opposing counsel to restate your answer. Stand by your initial response unless you are absolutely certain that you made an inadvertent misstatement that needs to be corrected. Attorneys will sometimes use the tactic of restating your answer with a slight change that is beneficial to their case.

Do accept the fact that a deposition is a fact-finding process and will probably not result in the plaintiff’s attorney dismissing your case. Many individuals going into a deposition believe that if they are allowed to explain their actions, the plaintiff’s attorney will “see the light,” apologize for having been a nuisance, and ask for dismissal of the case but it is very unlikely this will happen. Medical malpractice cases are expensive cases to bring to trial. By the time the deposition is conducted, the plaintiff’s attorney has most likely had the strengths and weaknesses of the case evaluated by an expert and has formed the opinion that there is validity to his or her client’s claims.

Do not get emotional or defensive. In addition to gathering factual information, the opposing attorney is assessing your presentation and credibility as a witness. Be courteous and professional and keep your responses calm and professional. If necessary, ask for a break so that you may collect yourself or confer with your attorney.

Assist your attorney in the formulation of questions for the experts and other witnesses.

Attend as many depositions as possible – particularly those of the plaintiff and the plaintiff’s expert witnesses. It is not uncommon for experts who are brutally critical on paper to back down when the subject of their criticism is sitting across the table.

