

EXPERT WITNESS PREP

Every expert should be prepared with the following list:

1. Before the prep for deposition the witness should be told to:
 - a. Organize his/her file
 - b. Re-read important depositions and records (let him/her know which)
 - c. Know the hospital records thoroughly
 - d. Make important sections of records easy to locate
2. During prep the witness must show you the contents of the file, particularly:
 - a. CV (review and check CV publications relating to the case in question)
 - b. Correspondence
 - c. Learned articles in file or depended upon
 - d. Hand written notes and “post its”
 - e. Bills/retainer contracts
3. You must review with witness:
 - a. His/her disclosure
 - b. Deposition notice
 - c. Deposition production requests
 - d. The allegations in the complaint
 - e. Chronology of events
 - f. Important medical records
 - g. Injuries suffered by plaintiff

- h. The theory of the case
 - i. Causation
4. Witness must be reminded of contacts:
- a. When first contacted?
 - b. By whom?
 - c. What told about the case?
 - d. What given to review?
 - e. What opinions reached?
 - f. Further contacts and time spent on review?
 - g. Be sure he/she gave opinions *before* disclosure as expert
5. Charges: How much? Billing to date.
6. Review *words and phrases to avoid using*:
- a. “Guess”
 - b. “Speculate”
 - c. “I think”
 - d. “I can’t prove it”
 - e. “I suspect”
 - f. “I can’t be certain”
 - g. “Possibly”
 - h. “Judgment” “Bad Judgment” “Good Judgment”
 - i. “School of thought” (It is not a school if it is contrary to standard of care.)
 - j. “In my opinion” (it’s more than that)
7. Review definitions of magic words:

- a. Proof means “Reasonable medical probability,” “More likely than not”
 - b. Malpractice (departure from standard of care)
 - c. Standard of care (show statutory definition)
8. Demeanor for witness:
- a. Dress neatly
 - b. Keep a neat file
 - c. Be respectful
 - d. Don’t argue
 - e. Be authoritative but not arrogant
 - f. Be serious – it is a serious case
 - g. Be committed – *show that you feel strongly* about the case
 - h. Don’t “personalize” the defendant attorney or defendant
 - i. Be confident – YOU are the expert
 - j. Don’t be *too* friendly with defense
 - k. Don’t joke
9. When answering questions:
- a. *Listen carefully* to questions (correct errors in question)
 - b. Don’t answer if you don’t understand it
 - c. Pause - *Think* before speaking
 - d. Set your own pace
 - e. Don’t rush or be rushed
 - f. Don’t guess

- g. Don't look to lawyer for help
 - h. Answer *fully* but *succinctly* – “Yes”, “No”, “I don't remember” are OK
 - i. Don't feel compelled to add to your answers during silence
 - i. Only answer the questions asked
 - j. Don't be defensive
 - k. *Do agree* that you are an expert (within your specialty) – don't be modest
 - l. Remember *you know the standard* of care at the time and place
 - m. Never joke on or off the record
 - n. No conversations off the record (except pleasantries) (He is not your friend)
 - o. Ask for break when needed or tired
 - p. Ask to rephrase confusing questions
 - q. Wait for objections to be resolved before answering question
 - r. Look at the records when needed
 - s. Correct a mistaken answer before the deposition ends
 - t. When in doubt ask for break
10. When asked to comment on documents:
- a. Insist on reading for context before answering questions

- b. Don't agree that a text is "authoritative" unless you are familiar with the specific section
- c. Feel free to look at the records if you are unsure

11. Prepare for Daubert:

- a. Have causation articles ready
- b. Have witness ready to discuss the "scientific methodology" employed in reaching conclusion regarding causation
- c. If a theory is "generally accepted" he should say so
- d. Know the physiological basis for causation.

EXPECTED QUESTIONS

12. Malpractice claims against the witness

- a. Nature of claim
- b. Disposition
- c. If similar be prepared to discuss

13. Attack on qualifications – be prepared to discuss what makes you qualified

14. Testimony from other cases:

- a. Percentage for plaintiffs and defendants
- b. Number of times for each
- c. Opinions given in similar cases
- d. Prior work for KK&B
- e. How we found you (if he knows). If not "I don't know"

- f. Percentage of income from litigation
15. Knowledge of the standard of care:
- a. The legal definition of Standard of Care (show or give him/her statute)
 - b. How he/she is familiar with the standard in his/her field
i.e.
 - i. medical training
 - ii. hospital committees
 - iii. meetings
 - iv. literature
 - v. experience
 - vi. discussions with colleagues
 - vii. common sense of how to prevent harm
16. Have him/her write a *list of deviations* and know:
- a. Why each constitutes a deviation (Because it exposes the patient to an unreasonable risk of harm.)
 - b. The facts that form the basis for each deviation
 - c. What facts – if changed – would change his/her opinion
 - d. How the deviation resulted in the harm to the plaintiff
17. Areas in which he/she agrees with defendant’s conduct and other expert’s opinions
- a. He/she should be prepared to “render unto Caesar”;
 - b. Avoid wholesale attacks

- c. Have him/her ready to explain that in his/her opinion, to constitute a violation. conduct must be significantly below what would be expected.

18. Prepare him/her to discuss:

- a. What he/she did to prepare
- b. Time spent
- c. Discussions with colleagues
- d. Discussion with attorney