



OHIO
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2016 Annual Convention

Medical Malpractice Session

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A Focus Group Review: The Winning Formula for Plaintiffs Lawyers

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This Year's Hot Issues: Wuerth, foreseeability, collateral source set-offs,
and beyond

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THIS YEAR'S HOT
ISSUES: WUERTH,
FORESEEABILITY,
COLLATERAL
SOURCE SET-OFFS,
AND BEYOND

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NATIONAL UNION FIRE INS. CO.V.
WUERTH, 122 OHIO ST.3D 594 (2009)

- ▶ “Under Ohio law, can a legal malpractice claim be maintained directly against a law firm when all of the relevant principals and employees have either been dismissed from the lawsuit or were never sued in the first instance?” Id., ¶1
- ▶ “*** we hold that a law firm may be vicariously liable for legal malpractice only when one or more of its principals or associates are liable for legal malpractice.” Id., ¶26.

RUSH V. U.C. PHYSICIANS, OHIO SUP. CT. CASE NO. 2016-0621

- ▶ Does the holding in *National Union Fire Ins. Co. v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, limiting the malpractice liability of a law firm to those principals and employees named as defendants within the limitations period, extend also to medical practices and hospitals?

ANTOON V. CLEVELAND CLINIC FOUNDATION, OHIO SUP. CT. CASE NO. 2015-0467

- ▶ R.C. 2305.113(C) Except as to persons within the age of minority or of unsound mind *** both of the following apply:
 - ▶ (1) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim.
 - ▶ (2) If an action upon a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim, then, any action upon that claim is barred.

ANTOON V. CLEVELAND CLINIC FOUNDATION, OHIO SUP. CT. CASE NO. 2015-0467

- ▶ R.C. 2305.19(A) In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant..

CROMER V. CHILDREN'S HOSP. MED. CTR., 142 OHIO ST.3D 257 (2015)

- ▶ In the context of an established physician-patient relationship, there is no need to independently determine whether the patient falls within the class of people who could foreseeably be injured, because the existence of the physician's duty to that patient is already clear. To this extent, the appellate court accurately held that foreseeability is irrelevant to a determination of a physician's duty. *Id.*, ¶26.

FORESEEABILITY OBJECTIONS

- ▶ The Ordinary Person Test
- ▶ Probability/Likelihood

JONES V. METROHEALTH MEDICAL CENTER, 8TH DIST. CASE NO. 102916

- ▶ 2744.05(B)(1) If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to those benefits.
- ▶ The amount of the benefits shall be deducted from an award against a political subdivision under division (B)(1) of this section regardless of whether the claimant may be under an obligation to pay back the benefits upon recovery, in whole or in part, for the claim. A claimant whose benefits have been deducted from an award under division (B)(1) of this section is not considered fully compensated and shall not be required to reimburse a subrogated claim for benefits deducted from an award pursuant to division (B)(1) of this section.
- ▶ Buchman v. Wayne Trace Loc. Sch. Dist., 73 Ohio St.3d 260 (2005)



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Medical Malpractice Session

Devastating Depositions

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DEPOSITION QUESTIONS FOR THE DEFENDANT PHYSICIAN/NURSE

PRIOR TO DEPO, OBTAIN:

1. CV
2. ANSWERS TO WRITTEN DISCOVERY
3. COMPLETE CHART
4. COMPLETE BILL
5. ICD 10 CODES
6. AUDIT TRAIL
7. PRIOR DEPOSITIONS
8. ONLINE SEARCH
9. OSMB
10. ABMS
11. STAFF BYLAWS AND REGULATIONS
12. POLICIES AND PROCEDURES
13. ARTICLES WRITTEN BY THE DEFENDANT
14. KEY MEDICAL LITERATURE (e.g., Up-to-Date, Consensus Statements, etc.)
15. PACKAGE INSERTS FOR MEDICATIONS
16. AMA CODE OF ETHICS
17. SPECIALTY BD CODE OF ETHICS
18. SAFETY RULES
19. INSURANCE ALERTS
(e.g., <http://www.thedoctors.com/KnowledgeCenter/PatientSafety/patient-safety>)
20. TJC (formerly JCAHO) STANDARDS
21. MEDICARE REGS
22. OHIO LAW, incl OAC
23. PATIENT BILL OF RIGHTS.

PREDEPOSITION CONSIDERATIONS:

1. SHOULD YOUR CLIENT BE PRESENT?
2. SHOULD YOU VIDEOTAPE THE DEPOSITION?
3. DO I NEED TO ISSUE A CROSS-NOTICE? A recent case held that a party who did not cross-notice a deposition was precluded from asking questions and could not re-depose the witness.

DEPOSITION CONTROVERSIES:

1. Examination and cross-examination “proceed as they would at trial.” Civ. R. 30(C)(1) (“as permitted at the trial”). Thus, for example, the deponent cannot consult with counsel during the deposition.
2. Objections to leading questions must be asserted or will be deemed waived. *See, e.g., BALDWIN’S OHIO PRACTICE*, Vol. 2, § 30-9, at 40 (2004).
3. Civility. *See* N.D. Ohio L.R. 30.1(b)(2) (“Opposing counsel and the deponent must be treated with civility and respect. Ordinarily, the deponent must be permitted to complete an answer without interruption by counsel.”).
4. Speaking objections. *Smith vs. Klein*, 23 Ohio App. 3d 146, 151 (Cuyahoga Cty. 1985) (“[I]t is not the function of counsel to act as a puppet master, offering his client’s proffered answer in lieu of the deponent’s answers. The purpose of a deposition is to probe the mind of the deponent, not to elicit self-serving answers from counsel.”); *Shimola vs. Nationwide Ins. Co.*, Nos. 48772 and 49372 slip op. at 26, 1985 Ohio App. LEXIS 7579, at *31-32 (Cuyahoga Cty. 1985) (“[C]ounsel acted improperly by repeatedly interrupting the questioning and in providing ‘clarifications’ to the agent’s testimony.”)
5. Instructions not to answer. *Gravill vs. Parkhurst*, 27 Ohio App. 3d 100, 104 (Cuyahoga Cty. 1985); *Brad Smith Roofing Co., Inc. vs. Holian*, 2000 Ohio App. LEXIS 4781, *7 (Cuyahoga Cty. 2000) (“Refusing to answer questions at deposition is equivalent to a failure to appear.”) *In re E.I. DuPont de Nemours & Co., Inc. vs. Thompson*, 29 Ohio App. 3d 272, 276 (Cuyahoga Cty. 1986) (same); *Rossmann vs. Rossmann*, 47 Ohio App. 2d 103, 104 n.2 (Cuyahoga Cty. 1975) (“It is improper for counsel to instruct a deposed party not to answer a question propounded at a civil deposition.”). If counsel believes the deposition is being conducted in bad faith or to annoy, embarrass, or oppress the deponent or party, the appropriate remedy is to immediately move the court for an order limiting or terminating the examination. *See Gravill vs. Parkhurst*, 27 Ohio App. 3d 100, 104 (Cuyahoga Cty. 1985); *Hearst/ABC-Viacom*, 145 F.R.D. at 63; *Gall vs. Saint Elizabeth Med. Ctr.*, 130 F.R.D. at 86; *Alexander vs. Cannon Mills Co.*, 112 F.R.D. 404, 407 (M.D.N.C. 1986); *W.R. Grace & Co. vs. Pullman, Inc.*, 74 F.R.D. 80 (W.D. Okla. 1977); *Shapiro vs. Freeman*, 38 F.R.D. 308 (S.D.N.Y. 1965).
6. Make a record of the questions you want answered:

If a deposition is sought, the availability of the privilege is not ground for vacating the notice of the deposition. The proper procedure is for the deponent to attend the deposition, to be sworn under oath, and to answer those questions he or she can answer without running a risk of incrimination himself. In this way a record can be made and the court can determine whether particular questions asked did entitle the deponent to claim the privilege.

8 Wright, Miller & Marcus, FEDERAL PRACTICE & PROCEDURE, § 2018, at 273-274 (1994) (footnotes omitted).

7. Unilateral termination of deposition. A deposition may not be terminated unless the party halting the deposition immediately seeks a protective order under Rule 30(d). See *Gravill vs. Parkhurst*, 27 Ohio App. 3d 100, 104 (Cuyahoga Cty. 1985) (“A party-deponent is *never* privileged in unilaterally halting a deposition by walking out, unless he immediately moves the court for a protective order terminating or limiting the examination”); *Warfield vs. Gardner*, 2006 U.S. Dist. LEXIS 54123, *15 (D. Ariz. 2006) (“There is nothing in the Federal Rules of Civil Procedure that allows counsel to unilaterally terminate a deposition.”) *EEOC vs. Body Firm Aerobics, Inc.*, 2006 U.S. Dist. LEXIS 36624, *3-4 (D. Utah 2006); *Hearst/ABC-Viacom*, 145 F.R.D. at 62; *Hanlin vs. Mitchelson*, 623 F. Supp. 452, 455 (S.D.N.Y. 1985), *aff’d in part and rev’d in part; remanded*, 794 F.2d 834 (1986) (“Rule 30(d) is the only provision allowing the interruption of a deposition.”). Termination without immediate effort to obtain a Rule 30(d) order may result in sanction. See *E.I. DuPont de Nemours & Co., Inc. vs. Thompson*, 29 Ohio App. 3d 272 (Cuyahoga Cty. 1986) (sanctioning attorneys for terminating deposition without having sought a protective order either before or during the deposition); *Gravill vs. Parkhurst*, 27 Ohio App. 3d 100 (Cuyahoga Cty. 1985) (affirming dismissal of the deponent’s complaint); *Hearst/ABC-Viacom*, 145 F.R.D. at 63-64 (ordering counsel to pay costs and fees incurred by opposing party in preparing and arguing motion to compel); *Hanlin vs. Mitchelson*, 623 F. Supp. At 455 (admonishing counsel); *Warfield vs. Gardner*, 2006 U.S. Dist. LEXIS 54123, *17 (D. Ariz. 2006) (imposing attorney fees and costs for terminating deposition “without making the slightest effort to comply with the appropriate procedures for terminating a deposition under Rule 30(d)(4)”); *EEOC vs. Body Firm Aerobics, Inc.*, 2006 U.S. Dist. LEXIS 36624, *3-4 (D. Utah 2006) (imposing \$1750 sanction).

THE DEPOSITION:

Stipulations:

1. THE “USUAL STIPULATIONS” (CIV.R. 32(D))

Rules:

1. DO YOU UNDERSTAND THE QUESTION AND ANSWER FORMAT OF TODAY’S PROCEEDING?
2. THERE ARE SOME SIMPLE GROUND RULES THAT I’D ASK YOU TO FOLLOW. FIRST, PLEASE LET ME FINISH MY QUESTION, SO THAT OUR COURT REPORTER CAN GET ALL OF OUR DIALOG DOWN ACCURATELY.
3. SECOND, PLEASE ANSWER VERBALLY, AS OPPOSED TO A NOD OF THE HEAD OR AN “UNH UH” OR “UH HUH,” AGAIN, SO OUR COURT REPORTER CAN TAKE YOUR RESPONSE DOWN ACCURATELY.

4. IF I ASK A QUESTION THAT YOU DON'T UNDERSTAND OR THAT DOES NOT MAKE SENSE, PLEASE TELL ME AND I WILL RESTATE UNTIL YOU ARE SATISFIED THAT YOU UNDERSTAND MY QUESTION; OKAY?
5. IF I CUT YOUR ANSWER OFF, I ASSURE YOU THAT I DO NOT MEAN TO. PLEASE TELL ME THAT I'VE CUT YOU OFF, AND I WILL GIVE YOU EVERY OPPORTUNITY TO FINISH YOUR RESPONSE; OKAY?
6. IF YOU NEED TO REFER TO ANY DOCUMENT TO REFRESH YOUR MEMORY OR TO REFERENCE INFORMATION, PLEASE LET US KNOW AND WE WILL PROVIDE THAT TO YOU.
7. IF DURING THE DEPOSITION YOU RECALL SOMETHING RELATED TO AN EARLIER QUESTION OR YOU WISH TO CLARIFY A PREVIOUS ANSWER TO MAKE YOUR TESTIMONY ACCURATE, PLEASE LET ME KNOW AND WE WILL ACCOMMODATE THAT; OKAY?
8. IF YOU WISH TO TAKE A BREAK FOR ANY REASON, PLEASE LET ME KNOW AND WE WILL ACCOMMODATE THAT; OKAY?
9. THIS DEPOSITION WILL TAKE ABOUT __ HOURS; DO YOU HAVE ANY COMMITMENTS THAT REQUIRE YOU TO LEAVE BEFORE THEN?

Background:

1. NAME
2. ADDRESS
3. ANY PLANS TO MOVE IN THE NEXT YEAR?
4. [TOPIC: REVIEW PERTINENT INFORMATION FROM C.V.]
5. DID YOU PASS THE BOARDS ON YOUR FIRST ATTEMPT?
6. HAS YOUR LICENSE EVER BEEN REVOKED, SUSPENDED, SUBJECT TO DISCIPLINARY PROCEEDINGS OR CALLED INTO QUESTION IN ANY RESPECT?
7. DID YOU PASS TESTS TO OBTAIN SPECIALITY CERTIFICATION ON FIRST ATTEMPT?
8. HAVE YOUR PRIVILEGES EVER BEEN REVOKED, SUSPENDED, SUBJECT TO DISCIPLINARY PROCEEDINGS OR CALLED INTO QUESTION IN ANY RESPECT?
9. DO YOU HAVE ANY SPECIAL RESEARCH OR PRACTICE INTERESTS?
10. HAVE YOU EVER BEEN CONSULTED AS AN EXPERT WITNESS IN A MEDICAL NEGLIGENCE CASE? [IF SO, DEVELOP DETAILS, INCLUDING WHETHER ANY REPORT WAS ISSUED OR DEPOSITION OBTAINED.]
11. HAVE YOU HAD YOUR DEPOSITION TAKEN BEFORE?
12. HOW MANY TIMES?
13. WHAT COUNTY/JURISDICTION?
14. WHAT WERE THE CASES ABOUT?
15. WERE YOU DEPOSED?
16. WHAT WAS THE PATIENT'S NAME?
17. MATERIALS REVIEWED TO PREPARE FOR DEPOSITION.
18. DID YOU REVIEW ANY MEDICAL LITERATURE TO PREPARE FOR THE DEPOSITION?

19. DID YOU SPEAK WITH ANYONE, OTHER THAN YOUR ATTORNEY, IN ORDER TO PREPARE FOR THE DEPOSITION?
20. EXPLORE HIS/HER EXPERIENCE WITH THE CONDITION/PROCEDURE IN QUESTION.
21. WHAT JOURNALS DO YOU SUBSCRIBE TO OR REGULARLY REVIEW?
22. WHAT REFERENCE BOOKS DO YOU GO TO FOR INFORMATION ON THE SUBJECT MATTER AT HAND?
23. DO YOU USE UP-TO-DATE?

Standard Questions:

1. DO YOU REMEMBER THIS PATIENT IN THE SENSE THAT YOU HAVE A PICTURE OF THEM IN YOUR MINDS EYE AND YOU CAN DESCRIBE HIM/HER HERE FOR US TODAY?
2. DO YOU REMEMBER ANY CONVERSATIONS WITH THE PATIENT OR THE PATIENT'S FAMILY THAT ARE NOT CONTAINED IN THE MEDICAL RECORD?
3. TELL ME ABOUT YOUR RELATIONSHIP WITH [THE OTHER ACTORS]: HOW OFTEN DO YOU SEE EACH OTHER EACH WEEK? DO YOU SEE ONE ANOTHER SOCIALLY? IN WHAT SETTINGS? DO YOU BELONG TO ANY OF THE SAME PROFESSIONAL ORGANIZATIONS? DO YOU DO COMMITTEE WORK TOGETHER? DO YOU ATTEND MEETINGS TOGETHER? DINNERS? BELONG TO ANY OF THE SAME SOCIAL CLUBS? DO YOU REFER PATIENTS TO HIM/HER? DOES HE/SHE REFER PATIENTS TO YOU? HOW OFTEN? SO YOU'RE FRIENDS?
4. DID YOU SPEAK WITH [LIST OTHER PROVIDERS] REGARDING THIS LAWSUIT?
5. [TOPIC: DISCOVER FACTS ABOUT THE CIRCUMSTANCES SURROUNDING THE EVENTS] WHAT HAPPENED? HOW DID (INVOLVED ACTORS) REACT?
6. [TOPIC: WHO WERE THE OTHER KEY ACTORS? DO YOU KNOW NURSE ____? DO YOU KNOW DOCTOR _____? (ESTABLISH LACK OF FAMILIARITY.)]
7. [SECURE DEFINITIONS (e.g., hypertension, sepsis)]
8. ESTABLISH THE ROLE OF AN ADMITTING PHYSICIAN.
9. ESTABLISH THE ROLE OF CONSULTANTS. CAN THEY WRITE ORDERS? CAN THEY INVOLVE OTHER CONSULTANTS?
10. ESTABLISH THE ROLE OF NURSES. THEY FUNCTION AS THE EYES AND EARS OF THE DOCTOR? THEY HAVE A DUTY TO REPORT ADVERSE CHANGES IN CONDITION TO THE PHYSICIAN? THEY HAVE A DUTY TO REPORT WHEN A PATIENT FAILS TO RESPOND TO TREATMENT?
11. DO YOU HAVE ANY NOTES OR AFFIDAVITS REGARDING THIS INCIDENT THAT ARE NOT CONTAINED IN THE MEDICAL RECORD?
12. [HAVE THE DEPONENT READ INTO THE RECORD ANY HANDWRITTEN NOTES.]
13. RULE OF THE ROAD: CAN WE AGREE THAT IN MEDICINE PATIENT SAFETY IS PARAMOUNT?

14. AND YOU SHOULD NEVER TAKE AN UNNECESSARY RISK WITH A PATIENT'S HEALTH?
15. [TOPIC: USE OF THE DIFFERENTIAL DIAGNOSIS]
 - a. MY UNDERSTANDING IS THAT EVERY PHYSICIAN IS TRAINED TO USE THE DIFFERENTIAL DIAGNOSIS METHOD, AGREE?
 - b. WHAT IS THAT IN YOUR WORDS?
 - c. IN GENERAL, IT INCLUDES TAKING A HISTORY?
 - d. PERFORMING A PHYSICAL EXAM?
 - e. COMING UP WITH A LIST OF POSSIBLE DIAGNOSES THAT MIGHT EXPLAIN THE PATIENT'S SYMPTOMS?
 - f. THEN PERFORMING TESTS OR ADMINISTERING TREATMENTS IN AN ATTEMPT TO RULE OUT SOME POSSIBLE DIAGNOSES AND RULING IN THE CORRECT DIAGNOSIS?
 - g. IT COULD BE DANGEROUS TO SKIP THE DIFFERENTIAL DIAGNOSIS AND JUMP TO CONCLUSIONS ABOUT A PATIENT'S DIAGNOSIS?
16. [TOPIC: WHAT IS THE STANDARD OF CARE?]
 - a. THIS IS THE RULE?
 - b. THE RULE IS IMPORTANT FOR PATIENT SAFETY?
 - c. YOU ARE SUPPOSED TO FOLLOW THE RULE?
 - d. DO YOU EXPECT OTHER CAREFUL DOCTORS/NURSES TO FOLLOW THE RULE?
 - e. IF YOU BREAK THE RULE, SOMEONE CAN GET HURT?
 - f. WHAT ARE SOME EXAMPLES OF HOW SOMEONE CAN GET HURT OF THE RULE ISN'T FOLLOWED?
 - g. IF YOU BREAK THE RULE YOU ARE RESPONSIBLE FOR ALL THE HARMS AND LOSSES?
17. [TOPIC: WHAT IS THE PROCESS? WHAT WAS THE LAYOUT OF THE ROOM?]
18. [TOPIC: DESCRIBE THE OPERATIVE PROCEDURE? WHAT STEPS DO YOU TAKE TO AVOID COMPLICATIONS? ARE THERE ANY OTHER THINGS THAT CAN BE DONE TO AVOID THE RISK OF COMPLICATION?]
19. WHAT IS THE PURPOSE OF THE MEDICAL RECORD?
20. CAN WE AGREE THAT YOUR CHART ENTRIES MIGHT BE RELIED UPON BY OTHERS IN TREATING THE PATIENT IN YOUR ABSENCE?
21. AND YOU YOURSELF RELY ON YOUR CHART ENTRIES TO KEEP TRACK OF YOUR THOUGHTS AND PLANS REGARDING THE PATIENT?
22. WOULD YOU AGREE THAT YOU HAVE A DUTY TO CHART RELEVANT POSITIVES REGARDING YOUR PATIENT?
23. YOUR CHARTING SHOULD REFLECT WHAT YOU ARE THINKING AND WHAT YOU ARE DOING? YOUR DECISIONMAKING PROCESS?
24. HOW MANY PATIENTS DO YOU SEE IN A WEEK?
25. YOU CAN'T BE EXPECTED TO REMEMBER EVERY IMPORTANT DETAIL ABOUT EVERY PATIENT, TRUE?
26. YOU NEED THE CHART FOR THAT?

27. A BASIC RULE OF SAFE DOCUMENTATION IS TO KNOW AND FOLLOW YOUR FACILITY'S DOCUMENTATION POLICIES AND PROCEDURES?
28. [TOPIC: REVIEW THE ACTOR'S NOTES: PHYSICIAN OR NURSING PROGRESS NOTES, ORDERS]
29. WHAT DECISIONS DID YOU MAKE AND WHY? [EXHAUST THIS LINE OF INQUIRY: ANY OTHER REASONS?]
30. WERE THERE ANY TEST RESULTS, IMAGING OR CONSULTANT RECOMMENDATIONS THAT YOU RELIED ON IN MAKING THESE DECISIONS? WERE THEY ACCURATE?
31. [TOPIC: CONVERSATIONS WITH CONSULTANTS, INCLUDING CURBSIDE CONSULTS.]
32. WERE THERE ANY DISCUSSIONS THAT ARE NOT RECORDED IN THE CHART?
33. [TOPIC: WHO WAS RESPONSIBLE?]
34. WHO CAN CORROBORATE YOUR TESTIMONY?
35. WHAT DOCUMENTS CAN CORROBORATE YOUR TESTIMONY?
36. DO YOU HAVE ANY QUESTIONS IN YOUR MIND ABOUT THE ACTIONS OR DECISIONS OF [OTHER ACTORS]?
37. WHAT ARE YOUR THOUGHTS ABOUT THE SKILLS/KNOWLEDGE/JUDGMENT OF [OTHER ACTOR]?
38. [TOPIC: ESTABLISH PROXIMATE CAUSE: WOULD X-Y-Z HAVE LIKELY MADE A DIFFERENCE? IS X-Y-Z PROVEN TO BE EFFECTIVE?]
39. [TOPIC: DEFUSE COMMON DEFENSES (e.g., DOUBLING TIMES)]
40. [TOPIC: POLARIZE THE EXTREME WITNESS. SEE Malone, *The Fearless Cross-Examiner*]
41. [TOPIC: DESCRIBE PATIENT'S SUFFERING.]
42. WAS THERE ANYTHING THAT THE PATIENT DID OR DIDN'T DO THAT CONTRIBUTED TO OUTCOME?
43. DID THE EQUIPMENT THAT YOU USED FUNCTION PROPERLY?
44. [TOPIC: WER THERE ANY OTHER FACTORS THAT CONTRIBUTED TO THE OUTCOME?]
45. [TOPIC: ADMISSIONS AGAINST INTEREST BY PATIENT OR FAMILY?]
46. ARE YOU CRITICAL OF ANYONE?
47. [TOPIC: INFORMED CONSENT: TELL ME WHAT YOU BELIEVE INFORMED CONSENT SHOULD CONSIST OF PREPARING A PATIENT FOR THIS PROCEDURE/MEDICATION? AGREE THAT A PATIENT HAS THE RIGHT TO DECIDE WHAT IS GOING TO BE DONE TO HIS BODY BY WAY OF SURGERY? AGREE THAT THE SURGEON KNOWS MORE ABOUT DIFFERENT METHODS TO PERFORM A SURGERY THAN DOES THE PATIENT? AGREE THE DEFENDANT HAD A DUTY TO OBTAIN INFORMED CONSENT FROM HIS/HER PATIENT BEFORE PROCEEDING? WHO PRESENTED THE INFORMED CONSENT FOR TO THE PATIENT FOR SIGNATURE? WAS IT SIGNED IN YOUR PRESENCE? HOW LONG BEFORE THE PROCEDURE WAS SCHEDULED WAS IT SIGNED? AGREE THAT PLAINTIFF LOOKED TO YOU FOR THE VARIOUS OPTIONS IN TERMS OF METHODS OF TREATMENT? IS IT A KNOWN RISK? DID YOU DISCLOSE THIS? WHAT IS YOUR COMPLICATION RATE? HOW DOES YOUR COMPLICATION RATE COMPARE WITH THE PUBLISHED

COMPLICATIONS RATES? DID YOU DISCLOSE THIS? DO YOU MAINTAIN A SURGICAL LOG? DOES IT CONTAIN PATIENT IDENTIFICATION INFORMATION? IF SO, CAN IT BE REDACTED? WHAT OTHER OPTIONS WERE AVAILABLE TO THE PATIENT? DID YOU DISCLOSE THOSE? WOULD IT BE REASONABLE FOR THE PATIENT TO SELECT ANOTHER OPTION? IF THERE WAS AN OFF-LABEL USE OF A MEDICATION OR DEVICE, WAS THIS DISCLOSED?]

48. [LET THEM TELL LIES. THE BIGGER, THE BETTER. BUT GET DETAILS!]

Button Up:

1. I THINK I'M DONE. HAVE YOU UNDERTSOOD ALL OF MY QUESTIONS?
2. HAVE I GIVEN YOU A FAIR OPPORTUNITY TO ANSWER?
3. REVIEW BY WITNESS: OBTAIN WAIVER ON REVIEW OF ANY VIDEOTAPE
4. PROVIDE ORIGINAL EXHIBITS TO THE COURT REPORTER (CIV.R. 30(F)(1))

Aftermath:

1. CAN THE DEFENSE ATTORNEY EXAMINE HIS CLIENT TO "CLEAR UP" HIS TESTIMONY? Under federal law, all interested parties may interrogate a deponent at the same deposition. *Smith vs. Logansport Cmty. Sch. Corp.*, 139 F.R.D. 637, 642 (N.E. Ind. 1991) ("[T]he principles which underlie modern discovery practice demand that each party represented at a deposition be afforded a full and fair opportunity for examination of the witness, subject only to the limitations provided by Rules 26(c) and 30(d).").
2. CIV.R. 30(E) PERMITS CHANGES "IN FORM *OR SUBSTANCE*" ON THE ERRATA SHEET.
3. RE-OPEN THE DEPOSITION?
4. UNLESS A DEPOSITION TRANSCRIPT OR VIDEOTAPE INCLUDES THE COURT REPORTER'S CERTIFICATION, IT IS NOT A "DEPOSITION" FOR PURPOSES OF CIV.R. 56(C). *Trimble v. Weber* (1997), 119 Ohio App.3d 402, 406.