

Legal Realities
Avoid Black Holes

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Who we are and what we do

Laura Ginett

- * 30 years of law practice
- * Defends malpractice claims for hospitals, LTC facilities, doctors, nurses and other caregivers
- * 25+ cases to verdict

Amy J. Stewart

- * 20 years nursing practice, including case management and wound care
- * 10 years consulting on nursing quality issues in LTC facilities
- * Certified Director of Nursing for LTC facilities

Our plan for today

Part One

Overview of the deposition process

Part Two

Mock deposition

What is a discovery deposition?

A process where an attorney asks questions of a witness in a legal proceeding with a court reporter transcribing all questions, answers and objections.

What is the purpose of a discovery deposition?

- * Discover facts and become educated on the issues
- * Obtain admissions
- * Obtain opinion testimony
- * Obtain impeachment testimony

Who can be deposed?

- * Person bringing the lawsuit
- * Weepers
- * Facility Staff
- * Administrative team
- * Nurses
- * CNAs
- * Consultants
- * Hospital Staff
- * Home Health Staff

Importance of the deposition

- * It will be used to cross examine other fact witnesses
- * It will be used as the foundation for expert testimony
- * It will be used to impeach you if you change your testimony at trial

How to succeed

Preparation

- * Prepare at home

Prepare with the attorney

- * Execution
- * Concentrate on the question being asked
- * Answer only question being asked

Preparation

At home

- * Ask for and read all of the relevant records

With the defense attorney

- * Deposition process
- * Medical records
- * Other records

Documents used at depositions

Medical records

- * What care was actually given?
- * In chart
- * Custom and practice
- * Nursing notes, MD notes, care plans, MDSs

Other documents

- * Policies & Procedures
- * Contracts
- * Bylaws
- * Rules & Regulations
- * Personnel file
- * Privileges
- * Job Description

Deposition process

Do:

- * Wait for the entire question
- * Ask for clarification
- * Answer verbally
- * Admit if you don't remember or don't know
- * Listen to attorney objections and instructions
- * Tell defense attorney if concern or problem (surprises are best left for parties!)
- * Use words like: generally, typically, routinely

Deposition process

Don't:

- * Vent about a boss, co-worker or facility
- * Speculate, guess or assume
- * Answer a question before it is completed
- * Agree with plaintiff's leading questions
- * Discuss the case with others
- * Ignore instructions and objections
- * Exceed your expertise
- * Use words like always and never

Deposition Case Study

Allegations

- * Alleged negligent wound and nutrition care
- * Delay in nutrition consult
- * Failure to treat wound

Negligence or Below the Standard of Care

"Standard of Care"

- * The level and type of care that a reasonably competent and skilled professional, with a similar background, would have provided under similar circumstances

Mock Deposition:

Sample questions and answers.

Mock Deposition

How to End up in the Black Hole

- * Skip preparation
- * Exceed your expertise
- * Confuse your custom and practice with recollection
- * Volunteer information beyond the question
- * Inflate the standard of care
- * Answer vague questions
- * Poor charting
- * Criticizing another caregiver