

Your Deposition is Being Taken:
Nine What to Know's and What to Do's

So the big day is coming up. It seems like a bunch of nothing has happened over an inordinate amount of time, and now you have to come in and swear under oath to “tell the truth, the whole truth and nothing but the truth” about an event that happened long ago.

Fret not, follow a few rules and everything will be fine. Unlike how they are often depicted on television, depositions are generally conducted in a polite manner. This is not to say, however, that they are friendly. They are not. They are adversarial and a good questioner may use a gentle, conversational tone to lull you into letting down your guard and encourage you to give long answers that may not be thoroughly thought through. So don't let this politeness fool you. Continue to be on guard and careful about the phrasing of questions and answers. If you don't understand a question, don't answer it. Ask for clarification.

First and foremost, be completely honest. This is not only the right thing to do, but it will keep you out of trouble. Many times the questioner already knows the answer to the question before she asks it, but she asks anyway in the hopes you'll give a different answer, which she can later portray to a jury as an outright lie. Worse yet, you don't want to get caught in a web of lies. If you do this, you'll not only ruin your case but also your relationship with your attorney. Always assume that the questioner already knows, or will find out, the truth.

Second, remember that your job is to answer questions, not to go out of your way to help the opposing attorney develop a case against you. Keep your answers short, but if you feel that you're being cut off or that your answers are being twisted and mischaracterized, say so and insist on being heard and correcting false interpretations of your answers by the other attorney. While you want to be respectful to questioning attorney, there's no shame in standing up for yourself, so long as you do it with honesty and appropriate decorum.

Third, if you don't know the answer to a question, or don't remember, just say you don't know or don't remember. If you *think* you know an answer but aren't sure, just say you aren't sure. There's no harm, and it may often be helpful, to qualify your answers. Just tell the questioner that you aren't sure.

Fourth, it is unrealistic to expect to remember every detail of an event that happened months or years ago. Speak with your attorney about how best to prepare for the deposition. Your attorney may be able to help you remember some forgotten details by reviewing what he or she has learned about your case through records and reports. You should be prepared to answer questions about important details, such as doctors you've seen, complaints you've made and how the event occurred.

Fifth, and just as important, you should know answers and be forthright about injuries and accidents you've sustained apart from the event that is the subject of the law suit because the other side may consider a forgotten accident or injury to be an intentional omission. Again, assume the defense already knows about the other injuries and accidents. You have nothing to gain by not mentioning a prior (or subsequent) injury or accident. To the contrary, omitting it

may hurt your case.

Sixth, if the questioner seems to be asking a very specific question such as, “Did you tell Dr. Smith that you were feeling better”, chances are it’s documented in the medical record. If you don’t think you said that, ask to see any record that notes that you said that because you don’t think you said it and want to testify fully and honestly. Trust me, you won’t be shown the record, but the record will be clear that you were asking for help remembering from the other attorney and they denied you the opportunity to refresh your recollection. This makes the defense look like they’re practicing “gotcha” law and are being secretive and unfair.

Seventh, don’t shy away from questions about your sex life. The questions may be very intimate, personal and embarrassing, but so is an injury. Sex is an important and beautiful part of life, and if what used to be a great sex life is now hampered by pain, and if your partner is complaining because you aren’t as responsive or “into it”, you should say so. Loss of good sex and the love it generates is significant and something people can relate to.

Eighth, you may be asked what you “cannot do” or “don’t do” as a result of your injuries. Most of us say we “cannot do” something when in fact we *can* do it, but because of pain or limitation we *avoid* doing it. The purpose of this question may be to find something you say you don’t or can’t do (for example, I don’t go to the grocery store alone because I cannot carry the heavy grocery bags) and to catch you on surveillance (yes, the defense does conduct surveillance, and very frequently) doing something you said you could not do. Later, this may be used to show that you were lying and trying to defraud the insurance company and your case may be ruined when, in truth, you were speaking figuratively, not literally. If your attorney is sharp and notices that you said you can’t do something that, in truth, you can do but avoid, he can ask you at the end of the deposition whether, when you said that you can’t or don’t do an activity, you meant that you try to avoid the activity but may do it infrequently.

Ninth, and again if you are asked what you cannot do as a result of the accident or injuries, you should understand that this question is overbroad, vague and impossible to answer. You can say that you cannot answer the question because you haven’t tried every activity in life, but you can give some examples such as “I no longer jog”, “I’m much more careful about the way I move”, “I ask other people to help me around the house when I used to do it all on my own”, etc.

Your deposition is an important part of your case. But if you’re careful, prepared and honest, you should have no problem.