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The Legal Information/Risk Management Refresher Course – The Deposition Process

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The deposition process is a method of pretrial discovery involving questions and answers under oath with the possibility of cross-examination. This can be an adversarial process. One goal of the deposition is to establish the opinion of the expert witness or the defendant relative to the case at hand. Such cases can range from malpractice suits to equal employment matters. A court reporter is present to record the proceedings. Other methods of recording, e.g. video taping, may be permitted. Depositions can be an intimidating process, as there is no judge present to modify the aggressiveness of the lawyers. Depositions can also be long, lasting for several days in complicated cases.

Preparation for a deposition is important. The role of documents, not all of which may have been subpoenaed, may be critical. Defendants, in particular, should work closely with their attorney and follow their advice on documents. One of the first questions that lawyers ask at a deposition is likely to be “Prior to appearing for this deposition, did you review any documents in preparation for the deposition?” Some documents, such as peer review documents, are privileged and not subject to court subpoena.

The record of the deposition may be introduced in court by the deposing lawyer. One approach is to have the witness agree from memory as to the position they defined during the deposition. Witnesses can request to see the written deposition, as opposed to simply agreeing from memory.

Educational Goals:

1. Present an overview of the deposition process in general, with additional emphasis on malpractice cases
2. Provide a mock deposition in which a witness will be deposed, while represented by an attorney, as an expert physics witness in a malpractice case in which a patient alleges to have suffered injury as a result of tangential breast treatments.
3. Review the mock deposition with an emphasis has to the strengths and weaknesses of the deposition